Ontario

Commission on Freedom of Information and Individual Privacy

Freedom of Information in Local Government in Ontario

Research Publication 7

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT IN ONTARIO

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Research Publication 7

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and Individual Privacy

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Ontario

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FOREWORD

The Commission on Freedom of Information and Individual Privacy was established by the government of Ontario in March, 1977, to "study and report to the Attorney General of Ontario on ways and means to improve the public information policies and relevant legislation and procedures of the government of Ontario, and to examine:

1. Public information practices of other jurisdictions in order to consider possible changes which are compatible with the parliamentary traditions of the government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals;

2. The individual's right of access and appeal in relation to the use of government information;

3. The categories of government information which should be treated as confidential in order to protect the public interest;

4. The effectiveness of present procedures for the dissemination of government information to the public;

5. The protection of individual privacy and the right of recourse in regard to the use of government records."

To the best of our knowledge it is the only Commission of its kind whose mandate embraces both freedom of information and individual privacy. The views of the public were embodied in the briefs submitted and in the series of hearings held in ten communities, and covering both Northern and Southern Ontario. In response to public demand, three sets of hearings, widely separated in time, were held in Toronto.

The views of the scholars and experts in the field are to be found in the present series of research reports of which this is number 7. These, together with the briefs submitted, constitute the backbone of our findings: the stuff out of which our Report will be made. Many of these stand in their own right as documents of importance to this field of study; hence our decision to publish them immediately.

It is our confident expectation that they will be received by the interested public with the same interest and enthusiasm they generated in us. Many tackle problem areas never before explored in the context of freedom of information and individual privacy in Canada. Many turn up facts, acts, policies and procedures hitherto unknown to the general public.

In short, we feel that the Commission has done itself and the province a good turn in having these matters looked into and that we therefore have an obligation in the name of freedom of information to make them available to all who care to read them.

It goes without saying that the views expressed are those of the authors concerned; none of whom speak for the Commission.

D. C. Williams
Chairman

PREFACE

At an early point in its deliberations, the Commission on Freedom of Information and Individual Privacy determined that its study of government information practices should include a specific examination of the practices of local or municipal government institutions in the province of Ontario. Although the effect of this decision has been to add a number of difficult questions to an already rather lengthy agenda, consideration of the freedom of information issue in the context of local government seemed unavoidable for a number of reasons.

In the first place, the public hearings held by the Commission in the fall of 1977 and the spring of 1978 revealed that a number of Ontario citizens who expressed concern about access to government information drew their illustrations from their points of contact with local government authorities. Perhaps this should occasion no surprise. For many citizens, local government agencies are the institutions of government with which they have the most immediate and frequent personal contact. Local politics and local political institutions might seem more accessible, more easily understood, and more closely related to the immediate environment than their counterparts at the provincial and federal level. For whatever reason, however, it appears that "secrecy at City Hall" is capable of engendering an especially keen sense of injustice.

Secondly, even the most casual observer of local government will appreciate that the structure of local government institutions is very different from the structure of the provincial government. The absence of a party system, of Cabinet government and of doctrines of ministerial responsibility in local government suggest that solutions to information access problems at the provincial level might be quite inappropriate if applied, without modification, to local government. Many American states, for example, merely extend their freedom of information schemes to all of the agencies of local government. It would obviously be unwise to follow this lead without engaging in a careful study of existing law and practice pertaining to local government institutions in Ontario.

Thirdly, our conversations with experts on local government in Canada suggested that a high degree of openness and accessibility of information already existed in the institutions of local government in many municipalities. Hence, an examination of local government might afford an opportunity to observe a working model of a relatively open governmental system and learn from its successes and failures.

Finally, a major thrust of the American legislation on open government has been to impose requirements on government agencies to conduct their decision-making, to the greatest extent possible, in meetings which are open to the public. These are the so-called "sunshine laws". In Ontario, for some years now, a much more modest open meeting law has applied to municipal councils. An examination of local government would thus permit us to explore the difficulties inherent in regulation of this kind.

Against this background, Professor Stanley M. Makuch and Mr. John Jackson were retained by the Commission to conduct an inquiry which would yield a

description of existing law and practice relating to information access at the local government level in Ontario. It was hoped that a variety of local government institutions could be considered: municipal councils, boards of education, police commissions. Further, it was hoped that the operation of these institutions could be observed in a variety of locales so as to ensure that the study would not be biased by a preoccupation with the larger urban centres or with the southern half of the province. In addition, the authors were asked to reflect on their research and their previous experience in the study of local government and to formulate recommendations which might be considered by the Commission. The present paper offers abundant evidence that all of these objectives have been met by the authors.

Professor Makuch is a member of the Faculty of Law of the University of Toronto and is the author of numerous articles and government studies on local government and administrative law. Mr. Jackson is a Lecturer in political science at the University of Windsor who has specialized in the study of local government and who has previously collaborated with Professor Makuch in research on regional government in Ontario.

Research assistance was provided during the summer months of 1978 by Joan Garson, a student in the Faculty of Law of the University of Toronto, and Larry Silani, a student in the program in Geography and Urban Studies at the University of Windsor.

The interviews which form the basis for this paper were conducted by the authors and their research assistants during the period from May through to September of 1978.

The Commission has resolved to make available to the public its background research papers in the hope that they might stimulate public discussion. Those who wish to communicate their views in writing to the Commission are invited to address their comments to:

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Toronto, Ontario M5G 1Z8.

It should be emphasized, however, that the views expressed in this paper are those of the authors and that they deal with questions on which the Commission has not yet reached a final conclusion.

Particulars of other research papers which have been published to date by the Commission are to be found on page 140.

John D. McCamus
Director of Research

FREEDOM OF INFORMATION IN
LOCAL GOVERNMENT IN ONTARIO

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INTRODUCTION

Our purpose in this study is to examine, comment on and make recommendations on the access of the public to the decision-making forums of local government bodies and to information in local government. We begin by describing what we consider to be the desirable state of affairs. This is followed by a description and assessment of the legislation currently affecting our concerns and the current practices that we found in the municipalities which we studied. Finally, we make recommendations for encouraging the degree of openness in decision-making processes that we consider desirable and for safeguarding the public's access to information.

It is quite obvious when one considers the very large number of jurisdictions which exist at the local government level in Ontario and the diverse functions with which they deal, that it was impossible for us to attempt an exhaustive examination of each of these within the four months allotted to us for the study. As a result, we decided to sharpen our focus by limiting the number of municipalities that we looked at and by emphasizing certain subject areas.

We chose to examine eleven municipalities. These were chosen with the objective of arriving at a cross-section of municipalities in terms of location, size and organizational structure. In the southern and western parts of the province, we looked at the County of Essex

(an example of a municipality operating in the traditional county system of government), the City of Windsor (an example of a large city where regional government has not been introduced), the Town of Leamington (an example of a medium sized town), the Township of Malden (an example of an urbanizing township) and the Township of Rochester (an example of a basically rural municipality). In the central part of the province, we looked at the Regional Municipality of Hamilton-Wentworth (an example of a jurisdiction where regional government has been introduced), the Municipality of Metropolitan Toronto (the largest municipal unit in the province), the City of Toronto (the largest city in the province) and the Borough of Scarborough (a suburban municipality in the Metropolitan system). In the eastern part of the province, we chose the City of Kingston (an example of a small city). In the north, we chose the Town of Dryden (an example of a small town).

We have also limited the subject areas to be examined. Firstly, we decided not to concern ourselves with most of the issues of individual privacy. The Commission is having a special study conducted on this topic. Since we feel that the problems in this field are not different from those at the provincial level, it would be repetitious for us to become involved in this. We have, however, concerned ourselves with this issue to the extent of making sure that our demands for openness will not intrude upon the necessity of protecting individual privacy.

We further refined the focus of this study by placing our emphasis on those functions of local government in which we consider that the concerns of the public and the style of operation are most different from the provincial level. We also took into account the public's expressed concern with having access in arriving at these functions. Using these criteria, we decided to focus on the planning,the education and the policing functions. Central to all functions, of course, and central to the concerns of the public are the financial decisions of the local government bodies. Therefore, we added this to our list of subjects. This emphasis on planning, education, policing and finance does not mean that we have not discussed other functional areas. Others inevitably arose in our research and were taken into account when we made our recommendations.

Once we had determined the functional areas on which we wanted to focus, it immediately became evident which bodies we would be examining. Obviously, municipal councils were first on our list because of their central role in municipal government. The concern with the planning function led us to look at planning boards, committees of adjustment and land division committees; the concern with education led us to look at school boards and the concern with policing led us to look at police commissions. In addition, we decided to examine the practices of the Ontario Municipal Board to see what impact these have on the public's access to information and decision-making in the municipal matters of planning and finance.

Our research involved examining legislation now applicable to these bodies in Ontario, legislation used in other government jurisdictions (particularly in the United States) and articles written on the subjects with which we are concerned. We also conducted interviews with members of the bodies being examined, their staffs, interested groups and individuals in the community and the media. Appendix A lists all those who were interviewed.

This report assumes knowledge of municipal government on the part of the reader. In those instances where we think that detailed explanation of municipal structures is required we have provided such an explanation. Often these explanations appear in footnotes.

CHAPTER I

FREEDOM OF INFORMATION IN LOCAL GOVERNMENT

A. The Need for Freedom of Information in Local Government

> Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty.
>
> Alexis de Tocqueville

If de Tocqueville is correct that municipal institutions constitute the basis of our democratic institutions and educate the citizens in the ways of democracy, then freedom of information is of great importance at that level of government. If another function of local government is to ensure local political authority and control over services provided in a local area,[1] then freedom of information is

1 Report of the Hamilton-Wentworth Review Commission, May, 1978, at 3.

crucial in local government. To develop skills in self-government and to ensure effective political control over services, citizens must be able to evaluate the quality of their local government. In short, public knowledge of the considerations upon which governmental action is based is essential to the democratic process.[2] The people must be able to go beyond and behind the decisions reached and be apprised of the "pros and cons" involved if they are to make sound judgments on questions of policy and if they are to select their representatives intelligently. This is the basic reason for supporting open meeting and access to information provisions in local government.

It may be further argued that decisions with respect to expenditure of public funds should be made openly so that the people can see how their money is being spent; in addition such openness deters the misappropriation of funds and/or conflicts of interest, although these have not been serious problems in the local governments of Ontario.

Several other reasons can be suggested for openness in local government. Local governments can be more responsive to their citizens if they are able to discern public reaction to proposed

2. Open Meeting Statutes: The Press Fights for the "Right to Know" (1961-62), 75 Harvard Law Review, 1199 at 1200.

courses of action. This is very important at the municipal level of government where there are numerous appointed bodies, such as planning boards, library boards, police commissions and transit commissions, which make legislative decisions but which do not have to face the electorate and, therefore, have no defined constituency.[3] In addition, the absence at the local level of clearly defined political parties to advance policies in elections and to be tested on those policies further supports the need for openness to test public reactions.[4] It should be noted as well that access to decision-making and information may also provide more accurate information for decision makers at the local level. Many municipal politicians can recall situations in which individual citizens were able to correct factual information in an official planning or zoning by-law report because of the individual's intimate knowledge of his

3 Although the bodies listed in the text have elected people appointed to them, the majority of members are usually non-elected. Moreover, the elected people sitting on such boards are not elected by their constituents to those boards. The Planning Act S.O. 1970 c. 349 s. 4 governs the appointment of planning board members. The Public Libraries Act R.S.O. 1970 c. 381 sections 5 and 7 govern the appointments of library boards. The Police Act R.S.O. 1970 c. 351 section 8 governs the appointment of police commissioners. The Municipality of Metropolitan Toronto Act R.S.O. 1970 c. 295 section 99 provides for the appointment of the Toronto Transit Commission. A review of the legislation governing these appointments will show that there is a great variation in the number of elected persons and the method of appointment to the various local boards.

4 It should be noted that the breadth of Canadian political parties in terms of philosophy and the lack of a strong ideological approach or defined policies means that access to information is equally important at the provincial and federal levels.

neighbourhood. Open meetings and access to reports and documents can foster more accurate reporting of government activities. Even when meetings are closed, the press often discovers something of what occurred but such reports may be incomplete and slanted according to the views of the informant. To restrict the public and more particularly the press to such sources of information is a disservice to the public which may be misled and the officials who may be inaccurately judged. Access to information means that the individual will be better able to understand the demands of government and the significance of particular issues and perhaps more willing to accept decisions than he would otherwise.

Finally, it should be noted that a sense of "fairness" often demands openness in local government. Municipal institutions often affect the lives of their citizens in direct and important ways. The rezoning of a particular area of a municipality can have an important influence on property values. The closing of a school can have a profound impact on the life of a family; the organization of a police patrol can be a matter of life or death. Although decisions affecting these matters generally are not viewed as determining legal rights[5]

5 See: Re Robertson et al. and Niagara South Board of Education (1973), 1 O.R. (2d) 548, 41 D.L.R. (3d) 57 (Div. Ct.) where it was held that a motion of a board of education to close a school was not a statutory power of decision within the meaning of The Statutory Powers Procedure Act. Moreover, the attendance of children at a particular school was held not to be a legal right, benefit, or licence.

and, therefore, do not require notice and a hearing, they do affect "rights" in the popular sense. Thus an opportunity to participate in the shaping of one's community should be provided. Access to information and decision-making is a prerequisite for this.

These arguments with respect to openness in local government go clearly to the need for both open meetings and access to the information that is used by municipal decision makers. The ability to attend meetings, hear deliberations and make representations is important in promoting the values listed above. It is also clear, however, that, without access to the same information as the decision makers have available to them in making a decision, there can be little democratic involvement by the citizen; he cannot readily evaluate the decision, judge the decision maker, correct misinformation, respond to policy initiatives nor participate in the deliberations. Moreover, it is important to note that the individual citizen must be made aware of what information is available and that information must be in a useable form in order to have meaningful access to information. In summary, meetings must be open and information available in order to serve the goals outlined above. An opportunity to be heard must also be provided.

It should be noted here that complete access to all local government administrative files is not being suggested. As was already noted, all information available to the decision makers for decision-making purposes should be available to the public. Such a requirement

provides for very wide access to information because of the way local government bodies function. They are essentially administrators of provincial policy who do not have the power to delegate any legislative authority.[6] As a result, virtually all matters come to council or boards for a decision. The staff can do little on its own so that, for example, matters such as the promotion of a labourer to foreman, removal of a parking meter, or construction of a huge development may all come before a local council or board.[7] Moreover, all the operating departments of a local government report to the board or council or a subcommittee thereof.[8] Access to the information received by the council or board or their committees is meaningful access to the information of the organization as a whole.

It would appear desirable, however, to provide access as well to any factual information that may not be received by a particular local government body. Data or information may be summarized so that not all factual information reaches a political body; such information should be available to the public on request. Such factual material has been collected or created by public funds and, as a result, should be available to the public.

6 See: Jaffary and Makuch, Local Decision-Making and Administration, Royal Commission on Metropolitan Toronto, June 1977, at 4-11.

7 Id. at 13.

8 Id.

The provision of access to material made available or presented to local bodies with the addition of all factual information provides a very wide net for public access while making it possible for staff to draft opinions, suggest policies and discuss matters with each other without premature public pressure and involvement. This means that the essentials of policy formulation can occur, ideas can be thought out and crystallized without unwanted outside influences. It also means, however, that any opinions received by council and all factual information held by the local body would be available to the public.

Although the foregoing discussion has focused on the need for citizens to attend deliberations, to be heard at those deliberations, and to receive information, it should be noted that individually elected or appointed legislative officials[9] also have similar requirements which must be met in order for them to perform their functions. In order to evaluate proposals put before them or to make suggestions for new policy initiatives, information must be available from the administrative arms of local organizations and meetings of executive bodies must be open to all legislators.

9 The term "legislative officials" is used to describe persons elected to municipal council, school boards and public utility commissions, as well as those appointed to various local bodies. All can be viewed from one perspective as exercising a local legislative function in serving on those bodies, even though, from another perspective as mentioned supra they may be viewed as administrators of provincial policies.

We have seen thus far that there is a strong rationale for freedom of information in local government. That rationale demands open meetings, the opportunity to be heard and meaningful access to the information available to the decision maker at those meetings as well as the factual information held by the local body. Moreover, it requires that individual legislators in addition to the public at large have access to information.

B. The Need for Restrictions on Freedom of Information in Local Government

It is necessary now to examine the restrictions that should be placed on freedom of information in local government. The above rationale and criteria for openness and access to information can be easily challenged. Democracy may be served by openness but sometimes the public has a great interest to be served in deliberations being made free from public knowledge or the pressure of public opinion.[10] There are a number of particular matters where restrictions on freedom of information would appear to be important. In counties,

10 Bales, Public Business Not Always Public (1975), 7 Urban Lawyer, 332 at 332.

the warden is elected as head of council by the county council.[11] In regional and metropolitan governments, the chairman is elected by councils. In certain cities, an executive committee is elected by the council.[12] Moreover, there have been recommendations that mayors be elected by councils rather than directly by an electorate.[13] Other local boards, such as the planning board and police commission, elect a chairman. In all of these situations, the position or positions to be filled are ones which are to provide a leadership role for the organization. Chairmen and wardens have no more legislative authority than other members of the body except for the ability to cast a tie-breaking vote.[14] In the case of the executive committee in the City of Toronto there are some administrative functions which slightly enhance the authority of the committee.[15] The authority of the executive committee of the planning board of the City of Toronto is minimal. The role of each of these officials

11 The Municipal Act, R.S.O. 1970 c. 284, s. 186.

12 By the City of Toronto Act, 1971 the City of Toronto's Executive is elected in this manner.

13 Supra note 6 at 39.

14 The Municipal Act, section 210, The Municipality of Metropolitan Toronto Act, R.S.O. 1970 c. 295, s. 15.

15 City of Toronto Act, (1968-69), S.O. 1968-69, c. 168, section 4 gives the Executive Committee the powers of a Board of Control under The Municipal Act.

is primarily one of leadership and of creating cohesion on a body which has no distinct majority group. They must use their talent to form a cohesive group of council and to set the overall direction of the council. The divisiveness of an open vote could have a negative impact on the ability of such persons to perform this function. Because of the importance of this leadership function and the lack of any legal authority to enhance it, it would seem acceptable that elections of the executive committees and heads of councils and local special purpose bodies be held in camera or by secret vote.

Another area where a strong argument can be made for closed meetings or restrictions on information is one where premature publicity would be detrimental to the interests of the community. The most common example of this occurs where a body is contemplating a land acquisition and does not wish disclosure to affect the price of the property. Another example is the negotiating of a collective agreement with employees where undue public pressure affects the local decision makers; public discussion also allows the employees to discover the negotiating strategy of the authority.

This need can also arise where a developer may wish to explain to a council, planning board or the executive of those bodies his proposal for a possible development. He does not wish the proposal to be public because of fear of competition from other developers or because he may still need to purchase more property. A

requirement of complete openness may unduly inhibit the ability of individuals to make such proposals. Moreover, a developer often wishes to inform the members of the body of his proposal and discover their preliminary concerns. Such a situation could be an acceptable one for a meeting in private and the non-disclosure at that time of the information which is provided.

The need to discuss litigation in private is another challenge to the concept of complete openness in local government. It is clear that, in order to arrive at the settlement of a dispute, bodies must meet in private. This situation is akin to that of labour negotiations where disclosure of the position of the body would make negotiations impossible.

It is often suggested that other aspects of litigation should also be in private. Examples of these are discussion of whether to initiate a suit against a particular party, discussion of whether a certain corporate action such as the passing of a by-law would result in an action against the body and discussion of the activities of employees of the body which may be the basis of an action against the body. In these areas, the discussion primarily focuses on the strengths and weaknesses of the case for or against the particular local authority. Such a discussion need not go into every detail of the possible action but rather involves the solicitor for the body suggesting whether an action should be brought or defended. With respect to the defending or bringing of actions,

the argument for privacy is less persuasive. The strengths and weaknesses of the case will be open to scrutiny in the trial of the action in any event. If the advice from the solicitor is that the case is weak and should not be brought or defended, the body may choose to follow that advice or not. If it does not then no damage is done by disclosure; if it does choose to bring the action then the fact that advice was to the contrary and that the body chose not to follow it is of public concern. Moreover, such an open procedure inhibits the ability of bodies to rely on advice of legality and non-legality as the only reason for adopting or rejecting a certain recommendation. It would appear appropriate, therefore, to restrict access to information on litigation matters but only where the discussion involves a settlement.[16]

Another area of concern with respect to too much openness is that of disclosing information about individual staff members and applicants for staff positions. The discharge of or the investigation of charges against local government employees must not be discussed or

16 See: Re Cadillac Development Corp. and City of Toronto (1974), 1 O.R. (2d) 21 (H.C.) where the City solicitor's memorandum warning against the passage of a by-law was introduced in Court upon an application to quash the by-law. The Court held that the council in passing the by-law contrary to the advice of its solicitor was not acting in bad faith.

It can be argued that disclosure of the fact that counsel's advice was not followed could affect the fairness of a trial if a jury were involved. It would appear that this problem could be dealt with in the selection of the jury if the disclosure is widespread or by restricting admission of evidence regarding the failure to follow the advice where such evidence is irrelevant.

reported openly in order to protect the individual involved. Privacy in the screening of potential appointees is often necessary if high quality candidates are to apply for government positions. When possible disciplinary action, dismissal, or rejection of an application for a position is being considered, full disclosure can cause great and often unjustified damage to personal reputations. However, dealing with such matters in private may increase the possibility of irresponsible character assassination or political favouritism. Therefore, the opportunity for an open discussion should be available when requested by the individual under discussion. Such a provision would appear to provide an appropriate balance between the need to protect individuals and the public interest in openness and in maintaining efficient personnel management and employee morale.

These exemptions for employees and applicants in positions of employment should not, however, apply to members of the local government bodies themselves, nor to appointees to any local government organizations.[17] A discussion of the censure of a member of council should be conducted in public as should the appointment of members of a planning board, transit commission or

17 The exemptions in other words should not apply to legislative officials. See: supra note 9.

committee of adjustment. All these people are in fact performing in the legislative arena. They are responsible to the public for the exercise of that function and the public should be able to evaluate their actions. Such persons are able to respond to an attack on their reputation in a public forum. Moreover the mere seeking of a public office means that the individual should be open to public scrutiny. This is very different from employees who are responsible only to the body which has appointed them and who are not able to respond publicly because of that relationship.

It is important to note as well that there may be other areas where rights to privacy are in conflict with the basic openness suggested earlier. The protection of the reputations of individuals other than those who are employees of the local body is an important consideration. Most would agree that the information on whom in the community is receiving general welfare assistance is not information which should be available or discussed openly. In contrast, information respecting breach of the minimum standards by-law would appear to be something that the community should have access to so that the community can ensure that action is taken by the local authority and the breaches remedied. This latter situation could also be exempted, however, on the general grounds of damage to reputation, as could a discussion on a proposed development where the reputation of the developer was called into question.

The difficulty of defining which information should be available and which should not in the areas of welfare records, breach of municipal by-laws and planning matters because of damage to reputation is a serious one. A broadly based exemption is undesirable because it could be used to exclude almost any discussion. The current law on defamation balances the right of individuals to be protected and the need for local officials to speak freely by providing a qualified privilege to those officials.[18] It seems appropriate, therefore, not to provide a broad exemption but rather to ensure that exemptions to freedom of information provided in other statutes should bind local authorities. The Commission in its Personal Records/Privacy Project is examining access to records in education, social welfare, health care and law enforcement; any specific recommendations regarding confidentiality from that project can apply to the municipal area. The problems of privacy with respect to these matters are not in fact different at the local level from that of the province.

Another suggested area for restricting freedom of information is the protection of plans filed with municipalities for planning and

18 "Statements made by a (council) member in his public capacity in a council meeting or one of its committees are prima facie privileged ... Such privilege does not extend to words spoken or written maliciously or which ... impute the commission of a crime." Rogers, The Law of Canadian Municipal Corporations, p. 211, Carswells, Toronto, 1971. Such a privilege should apply to all legislative officials of all local authorities.

zoning approval. The reason for this exception is to prevent the use of the plans of architects and engineers by others. Here there is a concern to balance the need to protect the investment of expertise and time on the part of the professional doing the plans with the need for the public to have full knowledge of proposed and approved developments. A provision allowing access to the plans but prohibiting publishing or copying of the plans would seem appropriate.[19]

One final area that cannot be ignored only affects police commissions. It is the area of security. Police commissions, particularly in large municipalities, are concerned about the distribution of information regarding security and investigation procedures and the purchase of certain equipment where the knowledge of such items might be beneficial to criminals. These concerns must be taken into account in the establishment of a right to information. Of importance here, however, is that any exemption for such matters not be described as broadly as similar provisions have been at other levels of government where an exemption for "national security" can mean a wide provision for exemptions whether actually required or not.

19 The Building Code Act, S.O. 1974, c. 74 presently has no such provision.

Although openness in government and freedom of information is a paramount goal, it can be seen that there are a number of areas where it must be restricted at the local level. The problems of electing leaders, preventing premature disclosure, damaging reputations, settling litigation, protecting the plans and drawings of individuals and protecting public safety all require restrictions on the rights of the public to openness and full information. The difficulty is ascertaining how to balance the competing concerns.

C. Methods of Implementation

There are a number of techniques that can be used to provide for the balancing of freedom of information with limitations on that freedom. Firstly, it is possible to enact legislation enabling or requiring local bodies to pass by-laws to determine on their own the balance between freedom of information and privacy. This approach could be provided for by the passing of a "final action" statute. Such a statute could provide that no final or binding action shall be taken in private. Such a statute would mean that each local authority could determine on its own what should be discussed in private because the local body could discuss and make decisions behind closed doors on any matters it deemed appropriate. The action is merely ratified in public and the information provided to the public is that information which the body decided to release in the closed meeting. In leaving the local authorities with broad discretion to

decide on which deliberations and which information should be kept secret, such an approach is far removed from any kind of guarantee for open government and full information and is, therefore, undesirable.

The suggestion of allowing local bodies to provide for freedom of information totally on their own is not an appropriate one for a further reason. The province, as the creator of those authorities, has some responsibility for the method in which they conduct their business. The Report of the Planning Act Review Committee has suggested with respect to the province's role in planning in Ontario:

> There is an overall obligation to ensure that a municipality's planning actions do not violate the civil rights of the residents and other parties affected by these (planning) actions. The Province should ensure that basic principles of natural justice are adhered to in the conduct of municipal planning.[20]

This is also true with respect to freedom of information and openness in government. These are of provincial concern and provincial standards should be set with respect to them. It is not appropriate that with respect to minimum rights of access and openness that the citizens in Dryden be treated differently from those in Toronto. A statute which provides only for "final action" to be taken in public is not sufficient as it leaves these matters of freedom of information and open government entirely in the hands of local bodies.

20 Report of the Planning Act Review Committee April, 1977 at 29.

Nevertheless, it is important to recognize that there are real differences between municipalities. The needs of all municipalities are not the same, nor are their values. Any attempt to provide for freedom of information as described earlier in this section should give recognition to those local needs and local values. The requirements of notice, for example, may not be the same in a small community as a large one. Some municipalities may wish to provide more openness than any provincial legislation would mandate. This should be allowed and encouraged.

In addition, it should be noted that procedures for applications for rezoning or procedures for delegations before councils or other local bodies may need to vary from municipality to municipality. Allowances must be made for such differences; this can best be done by making provisions for municipal input into decisions on the degree of openness and access to information in local government. Moreover, it should be noted that any attempt to legislate openness and access to information requires the input and co-operation of local officials, both elected and appointed. If a general exemption such as a "final action" provision is not to be used to determine what may be restricted and what may not be, then a broad provision guaranteeing openness and access to information must be enacted and carefully drafted exemptions will have to be included in legislation to enable some exceptions to general openness and access without destroying its efficacy. No matter how carefully exemptions are drafted there will be an ability to use them inappropriately and to defeat a general right to

information through the use of secret meetings and the unknown non-disclosure of information. Unless there is a real commitment on the part of local government officials to openness and access, legislation will not work. Provision for municipal involvement in determining access and openness can help create a commitment and willingness to have that openness and access.

It would appear appropriate, therefore, to have a system for assuring openness and access which utilizes both provincial and municipal legislation. The province for its part can clearly enunciate a commitment to openness and access in local government and make provision for minimum standards in that respect. In addition this will set the tone for local government, encourage attitudes of openness and create a presumption in the favour of openness and access. The local legislators can on their part within that more general approach provide mechanisms for adopting those minimum rights to meet their own special needs. They should be able to expand on the minimum provincial standard and make sure that all the standards will work in their municipality. They will indeed participate in making them work.

The encouragement of municipal involvement to ensure that access to information and openness legislation will function well in reality at the local level does not mean that some enforcement mechanism is not necessary. Although it is expected that serious problems of avoidance of the legislation will be minimized by municipal

involvement, there may be problems of honest disputes over the terms of provincial and/or municipal legislation and its implementation. Moreover, it would seem appropriate that some approval mechanism be in place to review the policies adopted by the municipalities. There are traditional mechanisms for dealing with both these areas. The courts have traditionally interpreted legislation governing municipalities while the Ontario Municipal Board has reviewed the official plans of the municipalities on behalf of the province,[21] and has had approval functions with respect to municipal planning policies found in zoning by-laws[22] and with respect to capital works expenditures.[23] The use of the courts either through the ability to quash or through judicial review of a municipal action would seem an appropriate and speedy mechanism for providing relief as it does now for actions of municipalities that are ultra vires. The use of the Ontario Municipal Board as an agency to approve freedom of information policies would thus be carrying on that tradition and indeed be moving it in a direction more appropriate for the Board, that is one of ensuring that the process of government

21 The Planning Act, R.S.O. 1970, c. 349 s. 15.

22 Id. s. 35(9).

23 The Ontario Municipal Board Act, R.S.O. 1970 c. 323,s. 64.

at the local level is fair rather than reviewing the substance of all municipal decisions.[24]

In summary, we are suggesting that, in seeking to provide for openness and freedom of information in local government, provincial legislation should set out a clear policy on freedom of information and minimum standards for it. This should take the form of a general right of the public to have access to the same information as local decision makers have during their deliberations, access to those deliberations and access to any factual information that an individual desires with a number of narrow and specific legislated exceptions. Furthermore, municipalities should be able to expand the basic provincial standards and determine how they will apply in the context of their municipality. This should be done through some overseeing authority such as the Ontario Municipal Board while the courts should enforce any breaches of the provincial legislation or the municipal policy by having the authority to determine that any action not made in conformity with the legislation is ultra vires.

24. See: Report of the Planning Act Review Committee, supra note 20 at 82-83.

CHAPTER II

PRESENT STATE OF THE LAW

> The only point we consider, is the right of an 'inhabitant' or person to examine into the affairs of the city. We are of the opinion that no rights exist except such as are expressly or by implication given by [the] statute.[25]

Without statute there is no public right to attendance at meetings of local authorities or access to any information.[26] With respect to attendance at meetings the courts have stated: "Prima facie, the constituent has no right of access to the meetings of the deliberative body".[27] The municipal councils in Ontario do not appear to have passed any by-laws regarding these matters. There have been some policies adopted but these are not adopted by by-law. While most municipal procedural by-laws deal with procedures for hearing delegations, school boards often have by-laws which also govern what can be discussed in camera. The provisions in school board by-laws are generally so broad that anything can be discussed in camera. No

25 Journal Printing Co. v. McVeity (1915), 33 O.R. 166 (App. Div.) at 174 per Falconbridge, C.J.K.B.

26 All local authorities in Ontario are the creation of statute and any general requirement to disclose information or any general right to attend meetings, therefore, must be found in statute. See: Re McAuliffe and Metro. Board of Commissioners of Police (1975), 61 D.L.R. (3d) 223 (Div. Ct.).

27 Supra note 25 at 170 per Middleton, J.

police commission appears to have a published policy on access or openness. Without statutory enactment the other criterion for freedom of information that we suggest - that of a general right of the public to have access to the same information as local decision makers as well as factual information - does not exist. The common law provides no uniform provincial standard. Beyond statutory requirements "the giving of information rests entirely on the discretion of the municipal authorities".[28] Therefore, without legislation the decision of what is open or closed, available or restricted is at the discretion of the municipality and various local authorities.

A. Open Meetings

The statutory requirement for open municipal meetings in Ontario is found in Section 190 of The Municipal Act:[29]

> (1) The meetings, except meetings of a committee including a committee of the whole, of every council and of every local board as defined by The Municipal Affairs Act, except boards of commissioners of police and school boards, shall be open to the public, and no person shall be excluded therefrom except for improper conduct.
>
> (2) The head or other presiding officer may expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting.

28 Id. at 172.

29 R.S.O. 1970, c. 284.

This section requires that only formal municipal council meetings[30] be open to the public; as a result most deliberations can occur in the committees of council or its subcommittees and no reasons nor reports that formed the basis for decisions formalized at a public meeting of council need be given. This section of The Municipal Act, in fact, legislates a final action provision which was discussed and rejected in the previous chapter of this report as an inappropriate method for ensuring freedom of information. The reason for that rejection was that real reasons for decisions, and the reports upon which decisions are based are not guaranteed to the public. Rather, access to them is at council's discretion; it is dependent on the council's decision on whether committee meetings will be open.

It could be argued that a recent decision of the Manitoba Queen's Bench affirmed by the Manitoba Court of Appeal has given new strength to this section of The Municipal Act in Ontario. In the case of Buhler v. Township of Stanley,[31] a municipal council declared that certain property belonging to the plaintiff was no longer registered

30 The section's provision also requires that only formal meetings of local boards be open. Under The Municipal Affairs Act, R.S.O. 1970, c. 118 local board includes public utility commission, transportation commission, public library board, board of park management, local board of health, planning board, "or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes including school purposes, of a municipality or of two or more municipalities or parts thereof". By section 17(2) of The Municipality of Toronto Act s. 190 of The Municipal Act applies mutatis mutandis to the Metropolitan Council and every local board of the Metropolitan Corporation. The acts concerning regional governments have similar provisions.

31 69 D.L.R. (3d) 602 affirmed at 72 D.L.R. (3d) 447.

under a plan of subdivision. The council was governed by a section in the Municipal Act of Manitoba[32] which is similar to section 190 of The Municipal Act (Ontario). At its regular meeting, the council of the municipality formed itself as a committee of the whole and met in camera to consider the by-law deregistering the property from a plan of subdivision. In doing so, it excluded members of the press who were in attendance. Thereafter it resumed in open session and passed a resolution permitting three readings of the by-law at one council meeting and passed the by-law. The court quashed the by-law because the council acted in bad faith in that it was motivated by the improper objective of enacting the by-law without disclosing that fact until it was accomplished. The court continued that the powers of the council to authorize meetings in private and suspend the restriction on three readings of a by-law at one meeting were abused. "The purpose of the in camera meeting was to suppress public knowledge not to protect confidentiality or deal with a sensitive matter of public business".[33] The Court of Appeal specifically agreed with a comment of the Trial Judge that "The policy of the law, ... is a standard of openness in municipal government intended to ensure public awareness of what a council is about in its conduct of municipal business".[34]

This decision, however, does not come close to creating a general right

32 S.M. 1970, c. 100.

33 69 D.L.R. (3d) 602 at 608

34 72 D.L.R. (3d) 447 at 448.

of access to information and deliberations. It clearly only relates to deliberations, but more importantly it can be easily restricted on its facts because the council had a particular motivation with respect to the land of a particular person, even though the court states that the council was acting legislatively and not judicially. Moreover, the council took a series of actions with which the court took offence: the failure to give notice under The Planning Act, the suspension of the three reading rule for the by-law and the failure of the committee of the whole to report to the formally constituted council on its "labours and decisions" as required by section 127(2) of the Municipal Act (Manitoba). These three actions can be seen as contributing to the court's decision to quash for bad faith. It should be noted, as well, that The Municipal Act in Ontario contains no provision for reporting on the labours and decisions of committees; the purpose of requiring such reporting is to ensure public awareness of what happened in committee meetings. Finally and most importantly, this provision for openness and the court's decision quashing on the basis of it does not create a general right to information or access because of the subjective nature of the evaluative process which the court undertook. There was no attempt in the decision to spell out under what circumstances "confidentiality" would be acceptable or what is a "sensitive matter of public business" and thus exempt. The decision leaves a very nebulous standard; the exceptions to the right are not known and so the breadth and strength of the right to information and access is most uncertain. It is possible to hope for further judicial clarification. However, this would not seem appropriate given the statutory basis for the right

in the first place. That statutory basis suggests that the legislature should clarify the right. Moreover, the narrow approach of the courts in this area as seen in the other decisions referred to above would suggest there is no reason for optimism in the creation of such a right either with respect to municipal councils or other local government bodies to which section 190 applies.

The statutory provisions respecting open meetings of the school boards and police commissions are equally unsatisfactory. The Education Act[35] states in section 179(1) that:

> The meetings of a board and meetings of a committee of the board, including a committee of the whole board, shall be open to the public except where a board determines that certain meetings of a committee of the board, including a committee of the whole board, shall not be open to the public, and no person shall be excluded from a meeting that is open to the public except for improper conduct.

Under The Education Act, final approval in public is at least required but there is no access to minutes or reports of what may have been discussed in private. Any matters can be discussed and determined privately with only a public formalization process. The Police Act[36] provides in section 10(3) that "the meetings of the board [of police commissioners] shall be open to the public unless otherwise directed by the board". Under The Police Act final

35 S.O. 1974, c. 109.

36 R.S.O. 1970, c. 351.

approval in public is not as a minimum required. That, in addition to the fact that even by-laws of the police commission do not need to be made public, means that it can be the most secretive of all local government bodies.

B. Access to Information

The basic legislative provision for access to information in municipal governments is found in The Municipal Act. Section 215(1) of that Act provides:

> The council shall appoint a clerk, whose duty it is
>
> (a) to truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council;
> (b) if required by any member present, to record the name and vote of every member voting on any matter or question;
> (c) to keep the books, records and accounts of the council;
> (d) to preserve and file all accounts acted upon by the council;
> (e) to keep in his office or in the place appointed for that purpose the originals of all by-laws and of all minutes of the proceedings of the council;
> (f) to perform such other duties as may be assigned to him by council.[37]

While section 216[1] of the Act provides:

> Except as otherwise provided in any Act, any person, at all reasonable hours, may inspect any records, books, accounts, and documents in the possession or under the control of the

37 R.S.O. 1970, c. 284. Note: The provisions of The Regulation Act R.S.O. 1970, c. 410 do not apply to a by-law of a municipality or local board by s. 1(d) of that Act.

> clerk, except inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or any committee of council, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand to any applicant on payment at the rate of 10 cents for every 100 words or such other rate as the council may fix.

The result of these two sections with respect to access to information is that documents listed in Section 215(1) are documents which the clerk is obliged to keep and are, therefore, under his control; a record book, recorded votes, the books, records and accounts of council, the minutes and by-laws are open to public inspection, regardless of whether they are in his physical possession.[38] In addition, any other document which is in fact in the control or possession of the clerk as a result of his function as clerk is to be open to the public[39] unless otherwise excepted. It should be noted that in many municipalities most reports are kept and circulated by the clerk so this section could have important implications for freedom of information. The exception provided in section 216, however, is a very broad one. It refers to "inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or

38 Re Ristimaki and Municipal Council of the City of Timmins (1974), 3 O.R. (2d) 609 (O.H.C.), per Cromarty,J.

39 Re Freeman and Byer, [1953] O.W.N. 854 (O.H.C.) and Re Simpson and Henderson (1977), 13 O.R. (2d) 322 (O.H.C.) per Steele, J.

any committee of council". The result of this exception is that the legislation provides only a minimal right to access to documents of significance. Those documents are essentially the by-laws and resolutions of the council as well as certain financial information. The provision of a minimal statutory right merely to inspect the formal record of what council has done does not facilitate the development of the citizens' own skills in self-government, nor does it ensure that they can have political control over their local government nor evaluate its effectiveness; for it provides no indication of why decisions were or were not made. If, as suggested earlier, public knowledge of the considerations upon which government action is based is essential to the democratic process, that public knowledge is not guaranteed by any means in The Municipal Act today. Although the actions of municipalities can vitally affect the "rights" of an individual to public health services or to use his property, that individual has no guaranteed access to documents or reports stating the reason for that action. Moreover, although there is little case law in this area, it should be noted that there is little reason to believe that the courts would narrowly construe the exceptions in section 216 to help facilitate the development of a general right to information. The reason for this is that the statutory authority for inspection of certain municipal documents is in derogation of the common law right of the municipality to refuse to produce anything for inspection. Although in a recent case the term "accounts" in section 215 was held to include "vouchers" and

"invoices"[40] of the monies spent by the council so that an individual was able to see the reasons for certain expenditures, this cannot be seen as even a small step towards a general right to information.

Section 19 of The Municipality of Metropolitan Toronto Act[41] reads as follows:

> Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Metropolitan Council, whether the acts of the Committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under his hand and the seal of the Metropolitan Corporation, to any applicant on payment at the rate of 15 cents for every 100 words or at such lower rate as the Metropolitan Council may fix.

Its wording is slightly different from that of section 216(1) of The Municipal Act while section 18 of The Municipality of Metropolitan Toronto Act is identical to section 215 of The Municipal Act. The Municipality of Metropolitan Toronto Act appears to provide wider access to information because it includes minutes and proceedings of committees and does not provide an exemption for interdepartmental

40 Supra, note 38.

41 R.S.O. 1970, c. 295

correspondence or reports to council.[42] It would appear therefore that all documents in the possession of the clerk in Metropolitan Toronto are legally available to the public.

Although one might lament the amendment to The Municipal Act which removed this wording, this provision for access to information is of little greater consequence than that found in The Municipal Act. Many larger municipalities including the Municipality of Metropolitan Toronto have chief administrative officers to fulfill a co-ordinating and overall management role. These officers have become more important than the clerk in terms of policy and decision-making. To the extent that reports and documents are kept by them and not by the clerk, the provisions of the section are ineffective. Moreover, it should be noted that the mere requirement that documents must be in possession of the clerk diminishes the effectiveness of the section.

42. The reason for the difference in wording between The Municipality of Metropolitan Toronto Act and The Municipal Act appears to be that when section 219(1) of the Metro Act was first included in that Act in 1953, it conformed exactly with a provision in The Municipal Act. In 1958, by S.O. 1958, c. 64 s. 14, the wording of the present section 216(1) of The Municipal Act was brought into The Municipal Act. The Municipality of Metropolitan Toronto Act was not, however, amended. All the legislation establishing regional and district municipalities and the Restructured County of Oxford follows the present wording of The Municipal Act and thus the wording of The Metro Act is an anomaly. It is interesting to note that the newer wording in The Municipal Act which is narrower than that in The Metro Act in terms of providing access to information was not debated at all in the legislature when the amendment was dealt with.

In Freeman v. Beyers[43] the plaintiff failed in his attempt to require the clerk to turn over a document because there had been no evidence presented that the document was in the possession of the clerk. In our interviews we found that at least on one occasion, a document was not given to the clerk to be circulated in order to circumvent this section. Moreover, in another case, Ford v. Corner and City of London[44] it was stated that this section (then applying to all municipalities) did not give any person "the right to inspect every scrap of paper in" the possession of the clerk, "regardless of when that document came into existence and whether it was temporary or permanent and whether it was intended to be acted upon or not".[45] The provisions of The Municipality of Metropolitan Toronto Act with respect to access to documents, therefore, although they are somewhat wider than the legislation governing other municipalities are of no greater value in guaranteeing access to information.[46]

43 [1953] O.W.N. 854 (O.H.C.).

44 [1957] O.W.N. 592 (O.H.C.).

45 Id. at 592.

46 It should be noted that section 224 of The Municipal Act requires the Treasurer to publish or mail to all ratepayers a financial statement for the municipality in a form prescribed by the province. This however is general in nature and does not provide meaningful access to information.

Legislation governing access to information of school boards and police commissions is also unsatisfactory. The Education Act section 179(3) provides:

> Any person may, at all reasonable hours, at the head office of the board inspect the minute book, the audited annual financial report and the current accounts of a board, and, upon the written request of any person and upon the payment to the board at the rate of 25 cents for every 100 words or at such lower rate as the board may fix, the secretary shall furnish copies of them or extracts therefrom certified under his hand.

Although there are no reported cases on this section, it is clear that a right to examine the minute book, audited financial report or the current accounts of the board does not ensure access to reports of staff or reasons for the decisions of the board. Factual material which is used for the board's decisions and staff reports are not open to the public. Once again there is clearly no general right of access to information and the opportunity to receive information is as limited as it is with respect to municipalities so that school boards can decide within this very narrow statutory requirement what should or should not be made public.

The Police Act makes no provision for access to information. As a result, the dissemination of information respecting policing is solely at the discretion of the various police commissions, committees of council or council where there is no commission.[47] Indeed although

47 The Police Act, R.S.O. 1970, c. 351, s. 8 only requires commissions in municipalities with a population over 15,000 persons.

police commissions are empowered to make regulations by by-law which are not inconsistent with provincial regulations[48] for the government of the police force, and although commissions are responsible for the policing and maintenance of law and order in the municipality[49] and although city police commissions may pass certain licensing by-laws,[50] there is no public right to any of the information held by those commissions including those by-laws. The Court in the case of McAuliffe v. The Metropolitan Board of Police Commissioners[51] stated:

> Neither the statute creating it nor any provision contained in any other statute requires that ... any proceeding minute or by-law considered or passed by the respondent [Metro. Board of Police Commissioners] or in possession of the respondent [Metro. Board of Police Commissioners] be made available to the public.[52]

The court in the McAuliffe case further held that the provisions regarding access to information, section 18 and section 19 of The Municipality of Metropolitan Toronto Act did not apply to the Metropolitan Board of Police Commissioners.

48 The Police Act, s. 16.

49 Id. s. 17.

50 The Municipal Act, R.S.O. 1970, c. 284, s. 377, s. 378, s. 385, s. 386, s. 381(1), s. 382, s. 383, s. 384(2).

51 (1975), 6 D.L.R. (3d) 223.

52 Id. at 225.

Although there is no case law respecting other local bodies such as planning boards, transit commissions, and library boards, there is no common law right to information with respect to them, nor does statute provide such a right.[53]

It should be noted, however, that council members appear to have certain special rights with respect to access to information. A member of council has common law rights to see such documents as are necessary to enable him to carry out his duties. He cannot seek information out of curiosity or go on a fishing expedition, however. He must seek information in his official capacity since the common law right arises out of the councillor's duty to keep himself informed of all matters necessary to enable him to discharge properly his duty as a councillor.[54] There appear to be no Canadian cases on this right with respect to municipal councillors, school trustees or members of other local boards and commissions.

It is clear, then, that this is no general right to information at the local level of government in Ontario. It is equally clear that there is no right to attend meetings of local authorities at common law nor

53 See: note 26 supra.

54 R v. Barnes Borough Council ex p. Conlan, [1938] 3 All E.R. 226.

in the statutes governing local authorities in Ontario. As with access to information public attendance at meetings in the absence of statute is at the discretion of the local authority.[55]

C. Other Statutory and Common Law Provisions

These are the statutory provisions directly relating to public access to information and meetings at the local level. It can be seen that they do not in law create any substantive right to information or access to deliberations. Thus far, the focus has been on the general right to information and access as found in statute and common law. It is important to note, however, that there are other statutory provisions and common law doctrines which may create a "right" of access to information or a "right" to be heard by a decision-making body although that may not include attendance at deliberations. These provisions do not approach the creation of a general presumption in favour of access to information or openness in local deliberations. They do, however, provide for some openness and access, albeit a patchwork of openness and access which does not meet the standards suggested earlier.

With respect to the police commission for example, section 14(2) of The Police Act states that:

55 See: note 26 supra.

> Every board shall, on or before the 1st day of March in each year, prepare and submit to the council or each council responsible for maintaining the force, for its consideration and approval its estimates of all moneys required for the year to pay the remuneration of the members of the police force and to provide and pay for the accommodation, arms, equipment and other things for the use and maintenance of the force.

The requirement of council deliberation of the estimates of the police commission is a method whereby at least the budget of the commission can be opened to public scrutiny in the municipal council. It is clear, however, that all deliberations on the matter at the council level may be held in private. Moreover, the estimates of the police commission are not required to be in such a form as to provide meaningful information to the public. The estimates may provide information on what the commission has spent on horses but not how the commission is allocating its men, for example between community relations work and traffic patrols.

Another example of where openness of a type is required is found in section 446(1)(b) of The Municipal Act which provides that before a municipality passes a by-law for "stopping up, altering, widening, directing, selling or leasing a highway":

> (a) notice of the proposed by-law shall be published at least once a week ...
>
> (b) the council or a committee of council shall hear in person or by his counsel ... any person who claims that his land will be prejudicially affected ...

The inadequacy of this approach can be seen in that no information

must be presented to the individual in advance respecting the reasons for the closing nor does an individual have a right to attend and hear deliberations on the matter. The surprising lack of any overall approach to information and access can be seen in that, although there is a right found in legislation to notice regarding the closing of roads, there is nothing in The Municipal Act or The Planning Act regarding notice or the right to be heard regarding zoning or planning decisions. The Planning Act merely states that every "planning board shall ... hold public meetings and publish information and all other material necessary for the study, explanation and solution of problems or matters affecting the development of the planning area."[56] The actual decisions of the planning board need not be made in public and a hearing need not be provided to an individual whose property is affected by a decision of the board.[57] The obligation to "hold public meetings" can in fact be a meaningless one given the lack of a general right to information, the lack of some crystallization by a board or council of what one is entitled to see, and the lack of a right to be heard by the board or council.[58]

56 The Planning Act, R.S.O. 1970, c. 349, s. 12(1)(b). It should be noted, however, that s. 16 of The Planning Act requires that copies of an official plan be made available to the public.

57 See: Re Florence Nightingale Home and Scarborough Planning Board (1972), 32 D.L.R. (3d) 17 (Ont. Div. Ct.) and Starr v. Corporation of the Township of Puslinch et al. (1977), 2 M.P.L.R. 208 (Div. Ct.).

58 There is no right to be heard by a council on an individual zoning matter in Ontario. See: Re Zadravec and Town of Brampton, [1973] 3 O.R. 498 (O.C.A.).

Moreover, The Ontario Building Code Act does not provide access to applications for building permits in order that individuals may inspect the plans of proposed developments. Although most municipalities in fact allow inspection of drawings, plans and specifications submitted with applications, the Act only provides access to the Association of Professional Engineers and the Ontario Association of Architects for the purposes of enforcing their respective Acts.[59]

The committees of adjustment and land division committees are bound by more stringent guidelines, in part because they deal only with individual parcels of land rather than general zoning by-laws or large subdivisions. The legislation requires that these bodies must hold a hearing[60] and that where the hearing is held it shall be held in public and the committee shall hear the applicant and every other person who desires to be heard in favour of or against the application.[61] Moreover, these committees are required to give written reasons for their decisions.[62] The result of these provisions is the anomaly that for minor variances to the zoning by-law or minor subdivision of land, that is severances, there is a well-established

59 The Building Code Act, S.O. 1974, c. 74, s. 6(2).

60 The Planning Act, R.S.O. 1970, c. 349, s. 42.

61 Id.

62 Id.

right to notice, a hearing and written reasons for the decisions in the legislation. For more important decisions such as zoning by-laws,[63] demolition permits,[64] official plan approvals and amendments,[65] and major plans of subdivision,[66] which can affect land values and uses much more profoundly than minor variances and consents, and which may also relate to individual parcels, there is no such legislated right at the local level. The apparent irrationality of the legislation is more disturbing given the lack of any overall right to information in local government and given that planning is perhaps the most important function performed by local governments.

One final statute that should be considered is The Statutory Powers Procedure Act,[67] which provides for a hearing in certain situations at the local government level. There is no statutory provision that this Act apply uniformly to local government authorities.[68] It is clear, however, that the provisions of the Act apply wherever there is a common law duty on the municipality to follow certain procedures

63 Id. s. 35.

64 Id. s. 37(a).

65 Id. s. 14, s. 17.

66 Id. s. 29.

67 S.O. 1971, c. 47.

68 The Statutory Powers Procedure Act, s. 3, states that the Act applies where a tribunal is required by statute to hold a hearing. As the text indicates there are generally no requirements for hearings.

because it is acting judicially and thus must give notice of its actions and hold a hearing.[69] The Statutory Powers Procedure Act, however, creates no overall right to information nor access to deliberations. It carves out one narrow area where an individual may have a right to notice and a hearing, if one is not provided by statute, when individual rights are being affected by a decision of a local authority. This provision, as already mentioned, does not provide a right to be heard on planning matters at the local level[70] nor would it apply to most decisions of school boards or police commissions other than to those affecting employees of those boards or other individuals who were specifically and directly affected by a decision.[71] Since the right to a hearing under The Statutory Powers Procedure Act does not specifically apply to local government institutions and since there is great difficulty in determining when a municipality is exercising such a statutory power, the impact of the legislation is lessened.

69 S.3 of the Act states that the Act applies where a tribunal would be otherwise required by law to hold a hearing. In the absence of some other hearing body, municipalities are required to hold hearings on individual rezonings at common law. See Wiswell v. Corp. of Greater Winnipeg (1965), 51 W.W.R. 513 (S.C.C.). It should be noted that a recent amendment to The Municipal Act, s.242(b) as enacted by Bill 80, 1979 provides that The Statutory Powers Procedure Act shall apply to hearings conducted under section 242(b). That section, however, merely empowers municipalities to delegate the authority to hold hearings where hearings are already required by law. The section therefore does not really expand the requirements to hold hearings.

70 See: supra note 58.

71 See: supra note 5.

It can be argued that the legislative scheme in Ontario for access to information is not as dismal as suggested here because of the role of the Ontario Municipal Board. That Board has important powers in local government. Under section 64 of The Ontario Municipal Board Act,[72] the Board's approval is required for a municipality to: authorize or exercise any of its powers to proceed with or provide any moneys for any "undertaking, work project, scheme, act, matter or thing" the cost of which is to be borne in the future. Where the assent of the electorate is required,[73] the Board may dispense with that consent.[74] The Board has broad authority, therefore, over the expenditures of moneys by local government for capital projects. In addition, the Board has broad planning authority. It hears requests for amendments to official plans that have been referred to it by the minister.[75] All zoning by-laws must be approved by the Board.[76] There is provision for appeal to the Board with respect to council decisions on demolition permits[77] and development review.[78] The Board, because of these various provisions

72 R.S.O. 1970, c. 323.

73 The Municipal Act, R.S.O. 1970, c. 284, s. 293 requires the municipality to obtain the assent of the electors for incurring certain debt.

74 The Ontario Municipal Board Act, s. 63.

75 The Planning Act, s.15.

76 Id. s. 35 and subsection 12 of that section further requires with certain exceptions that the Board hold a hearing in approving such by-laws.

77 Id. s. 37(a)

78 Id. s. 35(a)

and because it must "make such inquiry into the nature of the power sought to be exercised, the undertaking that is proposed ... the necessity of expediency of the same, the financial position and obligations of the municipality, the burden of taxation upon the ratepayers and into all other relative matters, as in the opinion of the Board may appear to be necessary or expedient",[79] is seen as the body which provides openness and access to information in the local government system in Ontario.

Indeed, the Board is seen as playing the role of ombudsman in the area of local government. J. A. Kennedy, a former chairman of the Board put it this way:

> "In the municipal field the same searchlight of public scrutiny does not exist as in the provincial field of government. There is no organized opposition to the government, seeking to expose maladministration, and the theory of ministerial responsibility does not exist ...
>
> In the light of the wide areas of power exercised by local government authorities ... it would appear that an Ombudsman ... would perform a useful service in the process of municipal government."
>
> Many times the author has perpetrated something in the nature of a pun by pointing out that the first three letters of Ombudsman are OMB (the letters used in headlines to refer to the Board). However, it is essentially true that in so many matters, including planning, the Board acts as an Ombudsman before the fact, so to speak. It provides a forum in which all parties can be heard after due notice in an adversary proceeding and objective appraisal made in the light of all the circumstances as threshed out at a full, open hearing.[80]

79 The Ontario Municipal Board Act, s. 62.

80 Kennedy, J.A. Some Observations on Planning Law (1970) Law Society of Upper Canada Special Lectures, Series 1970, Richard de Boo Ltd., Toronto, p. 162.

As a result of the importance of the Board's role, the courts have held that in planning matters, where municipalities are dealing with individual property and would ordinarily, therefore, be acting judicially and be required to hold a hearing, no hearing at the municipal level is required because the scheme of The Planning Act is that the hearing should be held by the Ontario Municipal Board.[81] The approach of having the Board as the main focus of access to information and openness is inappropriate for a number of reasons. Firstly, the board's activity occurs long after the parameters for decisions are set and initial decisions made. It is very late in the process. Secondly, the Board's notice requirements do not mean that the Board serves as ombudsman to all citizens. Under its notice provisions on zoning matters for example, notice goes only to property owners and not all residents.[82] Thirdly, although the Board maintains a file in which reports covering a particular application are kept, there is no requirement that all reports or documents pertaining to an application be put on file[83] and often files are difficult to see because of their location in Toronto and because they are sometimes taken away by Board members. Indeed, the file may be misleading, for the Board members normally rely on the information presented at the hearing and not on what is contained in the file.[84] As a result,

81 See: supra note 58.

82 See: Rules of Procedure, September 1977, Ontario Municipal Board.

83 Interview.

84 Id.

in order to have access to information regarding municipal action or to understand the reasons for an action, an individual may have to go to the length of participating in a Board hearing. Even then, adverse information will not necessarily come to light if the municipality chooses not to present it. The Supreme Court of Ontario rules of procedure apply to the Board; this means it has authority to order discovery of documents.[85] But this does not approach a right of access to information and access to the deliberations of local governments. The process of discovery, as does a hearing generally, requires an applicant to retain legal counsel and to become involved in expensive litigation to receive information from the Board. Finally, it should be noted that the Board's authority, while it is wide in governing both capital works and planning matters, does not cover all municipal activity and does not relate at all to school boards or police commissions except through the process of approving debentures. In short, the Board not only is an inappropriate ombudsman but is an inappropriate mechanism under present legislation to provide a right to freedom of information and access to local government deliberations.

The patchwork of statutory provision built on the common law rules of natural justice and supplemented through hearing and appeal provisions provides only indirect access to information and does not

85 The Ontario Municipal Board Act, s. 37.

in any way set out a framework for substantial access to information or deliberations in local government in the province. It is characterized by inconsistencies and incompleteness. It results in local authorities determining what is open and accessible. It furthermore requires legal counsel virtually any time information is sought because a formal hearing requirement is present. This present situation, although it provides the appearance of provincial uniformity because of the role of the Ontario Municipal Board and because of the legislative requirements applying to all municipalities, does not provide the general right referred to earlier and more importantly does not indicate a clear legislative policy in favour of general access to information and the deliberations of local bodies within minimum provincial standards. The present state of the law indicates a need for legislative reform which provides substantive minimal provincial standards and the ability of municipalities to operate within and to supplement those standards.

CHAPTER III

CURRENT PRACTICES

Chapter I of this report has indicated the requirements for a scheme of access to information and openness in local government. Chapter II has suggested that the legal framework which provides for access and openness in local government does not meet those requirements. There is no clear and uniform legislative policy with respect to these matters. The legislation sets no meaningful minimum provincial standards and does not encourage a commitment to accessible and open government at the local level. The standards or criteria to be used as a guide for the balancing of the competing needs for openness and confidentiality are not present in legislation.

These concerns perhaps would not be important if there had developed at the municipal level a consensus on openness and access in the absence of strong provincial direction. If the traditions of local government had given us, in a way that parliamentary traditions have given us, certain protections without legislation, then legislation would not necessarily be of crucial concern. Our examinations of a number of municipalities in the province, which were chosen in order to provide cross sections of all municipalities, indicate that there is no established pattern or consensus of openness and access in

municipal government.

With respect to open meetings in municipalities, the practice varies from one of some municipalities conducting all their business in private with only a public formalization or final action process to one of the conducting of virtually all matters in public.[86] On a continuum between very open government with general access to very closed government with little access, our interviews indicate that in Ontario there are a few municipalities at either end of that continuum with a large number spread in the middle of it. A similar pattern is revealed with respect to school boards, while police commissions tend to be more closed with no examples at the open end of the continuum. Our survey of selected municipalities also indicated that there were specific problems that individual citizens had even with the most open of systems and that there were concerns of legislators in local bodies about receiving information from their executives in all types of municipalities. In all local authorities access to documents and written information was related directly to public access to the meetings of the local authority but there did not appear to be any relationship of the openness of one local authority in a municipality with the openness of any other local authority in a municipality. As a result, in one municipality a school board could be open and the municipal council closed, or both the school board and the council open and the police commission closed.

86 As stated in the introduction to this report we examined a cross section of municipalities in terms of size, location and complexity.

A. Municipalities

1. Meetings

a) Open Municipal Councils

We found a number of municipal councils where the council and the committees of council except for the executive committee do not meet in private. Those municipalities conduct virtually all their business in public. Matters of litigation, personnel, collective bargaining, executive elections, appointments and development proposals, for example, when dealt with by the council are dealt with publicly and there is accordingly access to the information considered by those bodies. The councils of such municipalities ensure that notice of all municipal public meetings is placed in a local newspaper and that agendas are available to the press and those registered on the municipality's mailing list.

All open municipalities now receive delegations. In some municipalities they are allowed to appear before council; in other municipalities they only appear before committees of council. The reasons for the differences are the time constraints already imposed on some municipalities by the pressure of business.

It should be noted that in such municipalities some meetings at the executive level of council are held in camera. Those bodies ordinarily

meet in camera to discuss major personnel, litigation, and collective agreement matters. But ultimately the reports considered by the executive are received by the whole council and its committees for action and public consideration. The executive's ability to deal with matters on a temporary basis in private is useful for gathering further and accurate information and to propose a course of action to the council or its committees. Ultimately all written reports to the executive do become public; major personnel problems and reorganizations are thus publicly considered and debated and major collective agreements are considered publicly. Moreover, in these municipalities the in camera discussions and reports of the executive are often open and available to certain members of council who might have a particular interest in a matter. Although there was some suggestion that certain matters had been dealt with for too long a period in private, generally citizens, media and councillors of such municipalities were satisfied with the openness of their government.

One exception to the general openness in these municipalities was the discussion of preliminary budget matters in private. There was an example of the executive of a municipal council discussing budget targets in private in order to form a united front in face of adverse public opinion and in order to ensure that individuals on the executive would support each other. There was another example of a budget committee discussing in camera the cuts in the budget for their departments with individual department heads in order to deprive the department heads of the opportunity of arousing public opinion in

their favour. The in camera budget deliberations were in essence an opportunity to persuade a department head in private that his budget should be reduced.

It is clear that provincial legislation requiring general openness and access with certain exceptions would have little impact on the activities of such municipalities. These municipalities, in essence, would exceed the standards of such legislation in all respects except with respect to the budget. It should be noted that a general policy of openness with exceptions need not prohibit the continuation of this practice. Moreover, a requirement for a municipal policy on openness and access would help to formalize the practices of openness that now exist. We are only aware of two municipalities with policies on access and openness; these two are not among the municipalities that are most open. The practices of the most open municipalities have developed over time in an ad hoc way because of responses to the demands of the local media and the needs of the local community and the attitudes of the members of council and staff. These practices could, however, change with a single election or the development of a difficult problem for the council to face. Therefore, legislative changes and the requirement of a municipal statement would be beneficial to even these municipalities. The setting out of such standards, moreover, would inhibit the development of such practices as the discussion of initial budget matters in private. These practices too have grown up on an incremental basis in response, it seems, to new attempts to control spending. They are inappropriate,

however, not only because the budget is one of the most important municipal documents and concerns the spending of public moneys, but also because the excuse of avoiding public pressure in the case of the budget is merely an evasion of the ultimate responsibility that local politicians must take for the budget. It was also noted by one administrator that the discussion of budget cuts in private resulted in private negotiations between the department heads and the politicians rather than an opportunity for the politicians to question and review publicly the activities of the department.

It can be seen, therefore, that minimum provincial standards and a municipal policy statement would benefit the practices of even the most open municipalities. Not only would it give added weight to their commitment to openness but it would also require it and formalize it, thus giving it added protection. A municipal policy could also provide for municipal procedures on receiving delegations. It would seem appropriate to allow municipalities to adopt a policy on delegations, including procedures on such matters as the time to register in order to deputize and the length of time a deputant can take. Such an adopted policy could help ensure that all deputants are treated equally and have certain minimum rights in terms of deputizing.

b) Partially Closed Municipal Councils:
Personnel, Legal and Property in Private

The response given to us by the members of numerous councils when we asked what matters are discussed in private meetings was "personnel, legal and property matters".

This exception to open meetings by municipalities is broadly interpreted and results in many matters being discussed in camera. Protection of the reputation of an individual employee or prospective employee was the reasoning behind discussing many personnel matters in private. The common practice is to make a formal announcement of the final decision in a public council meeting but not to rediscuss the merits or demerits of the decision. This relates primarily to appointments and to firings. It is common practice not to give any details of the considerations which went into the decision and also not to let it be known if there was dissent on the decision which the council as a whole made. It is generally understood that, even if there were strong disagreement within the closed session of the members of council, there will be a unanimous vote at the council meeting. On the rare occasion where dissent is carried to the extent of being expressed at an open meeting, there is a very strong opposition to such action from other council members who feel that a basic trust has been broken. Generally, the public has not appeared to express disagreement with this manner of operation. The one major exception to this occurs when senior staff are released.

This is always a delicate problem and councils come under strong pressure from the public and in particular from the media to give reasons for their action. Councils generally avoid this for reasons of protecting the individual being dismissed and possible law suits from that person and also because of possible embarrassment to the members of the council. Cases are rarely so clear cut that they would not bring embarrassment to all the parties involved. But, with total secrecy, the public is never sure of what caused the dismissal of a senior person and, therefore, they often tend to lose confidence in their municipal government.

Also, reprimands or questioning of senior staff, if council is involved, will be conducted in closed meetings. Here, the reasoning is not only the protection of the individual being questioned from possible embarrassment, but also to safeguard the smooth operation of departments. If it is known by department personnel that their department head has come under criticism from some council members, it is quite possible that his position in the department will be undermined resulting in a decrease in his ability to provide good leadership.

Contract negotiations with employees are also discussed in closed meetings in order to protect the negotiating position of the municipality. Those people negotiating on behalf of the municipality (sometimes a committee of the council and sometimes senior administrative staff [the personnel director, the chief administrator, the municipal

solicitor]) will report to the whole council periodically on the progress of negotiations and ask for guidelines on concessions which they should make. It was frequently explained to us that to hold these discussions in public sessions of council would make it impossible to arrive at the best possible agreement for the municipality since the council's adversaries (the employees) would know how far they could push the negotiators for the municipality. Once a contract has been tentatively reached, the employees will first ratify it and then the council will ratify it in an open session of council. This ratification by council is a mere formality at this stage; it will not be discussed by the council members.

Personnel policies are another area discussed in private under the rubric of the term personnel. Some personnel policies are in fact part of the contract with employees and therefore subjects for the negotiations and bargaining sessions with the personnel or their associations. These matters are, therefore, part of the private planning sessions which are conducted by council members when working out strategy for the negotiations. Other personnel matters are not subject to negotiation, however. Examples of these are residency requirements, moonlighting and departmental organization. In many municipalities, items such as these are put under the heading of personnel matters and are, therefore, discussed in private. Other municipal councils feel that the same reasoning used to justify discussing other personnel matters in private cannot be applied to these types of matters. They feel that personnel policies are not

discussions of any one person and are not, therefore, injurious to the reputation of an individual. Therefore, the first argument behind discussing these matters in private -- protection of the individual -- no longer applies. Likewise, if they are not matters that have to be negotiated with the employees for the contract, the argument of needing to discuss them in private to protect the best interests of the municipality are no longer seen to apply.

It can be seen that a number of municipalities see the need to discuss many personnel matters in private. The legitimacy of doing so has been indicated in Chapter I and should be supported by provincial legislation and a municipal policy. It is important, however, that both the policy and the legislation point out that only when discussing specific contract negotiations and named employees should personnel matters be dealt with in private. There is no overriding need to discuss departmental organization and personnel policies privately. No one is damaged by such disclosures. Indeed, information should be available on such matters. Similarly, any discussion of the conduct of council members themselves, which occasionally is dealt with as a personnel matter, should be dealt with publicly. A legislative provision and municipal policy specifically dealing with this matter will encourage the narrowing of the exemption and encourage more openness.

The second topic which these councils accept as legitimate to discuss in camera are legal matters. In the situation where the municipality is being sued by an individual or corporation or may be subject to being sued if it acts in a certain way, or where the municipality has commenced a law suit against someone else or is considering doing so, it is felt that the council should receive legal advice and discuss such matters among its own members in private. To discuss in public the weaknesses of the legal position of the municipality would, in effect, be helping an adversary to develop its case. The procedure used by most municipalities in such cases is to discuss the matter in private with their solicitors and, having come to an agreement among themselves as to the action to be followed, to pass a motion in a public meeting to proceed or not with a case but not to discuss the merits or demerits of the municipality's position at that meeting. In this way the council formally approves the actions to be taken by its solicitor without giving away the details of its position.

The difficulty with this exemption being interpreted solely at the discretion of the municipality is that it may be used inappropriately. Legal advice on the validity of a proposed by-law received in private may be used secretly in place of a public debate on the merits of a decision. There may also be an inability to discover the nature of the advice the municipality has received before passing a by-law. Such advice should be received openly for citizens to evaluate the actions of their council. The advice need not be so detailed as to

reveal the municipality's case; a summary of a solicitor's concerns can be dealt with openly.[87] Since litigation files would not go to council, there is no concern that such items would be available to adversaries. A provision limiting municipalities to discussions of legal settlements in private would resolve problems with respect to litigation.

The other matter that these councils discuss in closed sessions is the purchase of property by the municipality and the sale of municipally-owned property. The procedure frequently followed by these municipalities when purchasing or selling property is as follows. A member of the administration will have decided that a particular piece of property should be considered for purchase or sale. He will do an appraisal of the worth of the land. At this point, the administrator will report to the members of council at a private meeting. The purpose of this meeting is to discover if the council members are indeed interested in acquiring or selling the particular piece of property and the price range that they would consider reasonable. Having received directions and authorization from council members, the administrator will then for the first time approach the purchaser or vendor for the purpose of negotiation. If an agreement for a particular amount is reached and signed, the administration will then make a formal report to the council at a public meeting. The

87 See note 16, supra.

council will then make a public decision entering into the agreement. The advantage of the prior meeting or meetings of council in private to discuss land acquisitions is that an offer to purchase can be made by the council without the effect of increasing the market value of the property because of the knowledge that local government is purchasing the property. With respect to both purchases and sales of property, there is an added benefit that negotiations can proceed without the other party knowing the ultimate amount at which the municipality is willing to buy or sell. The municipality is, therefore, in a better bargaining position. The final purchase or sale occurs at a public meeting.

There appears to be no reason for changing this procedure. It should be noted, however, that at the time the agreement is being discussed publicly all reports and items received by the council in private should be made public including reports on the appraisal of the properties, surveys of the property and any reports concerning its use. The reasons for confidentiality regarding price and bargaining are no longer applicable and all documents should be made public in order to facilitate the public's evaluation of the council's actions.

These three types of matters - personnel, legal and property - are the ones which many municipalities considered to be legitimate topics for in camera discussions. These exemptions are valid if they are narrowly construed exceptions to a general right to information.

Nevertheless, even in those municipalities which were most adamant that these three topics were the only ones discussed in private, we often found that there were three other purposes for private meetings of council members: to discuss budgets, to discuss appointments and to meet with developers to discuss major development proposals.

Often budgets are discussed in private before the final public presentation and adoption. All assessment of budgetary requirements thus occurs in private. The inappropriateness of such actions was described above and, therefore, such private deliberations should not be allowed.

Municipal councils are responsible for making numerous appointments to public boards and commissions as well as to various other organizations. These appointments are made from council members as well as from private citizens. In addition, there is the necessity of making appointments to any committees of council which the municipality may have. These latter committees consist of council members only. In some municipalities, the appointments are made by the head of council. In other municipalities, the whole council makes the appointments. In the cases where appointments are made by the council members, the discussions around appointments are usually conducted in private meetings. Then a formal report naming who has been appointed to each body is passed in a public council meeting. The report is as a rule accepted without discussion by a unanimous

vote even though there very likely were divisions within the closed meeting. It is rare that dissension on these matters will be expressed in public.

Appointments to committees and other bodies are often the subject of considerable debate. There are two basic reasons for this. Firstly, the makeup of these - especially of bodies like the planning board, the committee of adjustment and the transit commission - can be very important to the council in terms of the policies which result and the individual decisions made. Therefore, differences in outlook on the council can result in strong disagreements about who should be on particular bodies. Secondly, the opportunities for handing out political patronage by municipal councillors are not very numerous. Appointments of private citizens to various bodies are one of those opportunities. These two factors combine to result in very strong feelings and considerable jockeying and trading off at the time when appointments are being made. It is common for informal agreements to be made in which one councillor agrees to support another's choice for a particular body in return for being supported by that councillor in another appointment which is important to him. Councillors generally prefer not to allow such activity to be known by the public at large. Another reason given by councillors for having these sessions in private is to avoid possible embarrassment to those who are being considered for appointment or who have applied for a position. The latter is an argument similar to that used in explaining why personnel matters should be discussed in private

rather than in public meetings.

There would appear to be no justification for the continuance of this practice. The function of these committees is not to provide leadership. Moreover, the council members should be able to be evaluated on the quality of the decisions made on appointments as they would on any other matter. In addition, the persons seeking appointment are seeking a public office and are not in the position of an employee. They must be open to public scrutiny and criticism.

The procedure for the election of county wardens and of regional chairmen has become a subject of discussion in some municipalities recently. Many county and regional councillors prefer to have the election of the head of their council conducted by secret ballot because they fear that it can have an adverse effect upon the ability of the warden or chairman to lead the council if it is known how many and precisely who voted against him at the balloting. It is also felt that it could result in a councillor who voted against the person finally chosen as head of council not receiving the few benefits that the head of council is able to hand out such as appointments. The procedure followed by some counties and regions is to hold a secret ballot. After the ballot has resulted in a majority choice of a warden or chairman, the council holds another vote; this vote, which is recorded, is unanimous.

The ability to make executive appointments in private would seem an appropriate one for municipalities to have, given the need to facilitate the leadership role of the executive which we discussed earlier. A narrow exemption for executive bodies to a general policy in favour of openness would result in municipalities dealing with these matters in private if they so desired without requiring them to do so.

Our examination indicated that councils limiting themselves to discussing only personnel, legal and property matters in camera also sometimes have private meetings with a developer who is intending to put up a major development. The frequency of these meetings and the type of topics for which they will be held varies considerably according to the municipality. In large municipalities, which have a heavier reliance upon appointed staff members than smaller municipalities, most preliminary discussions between the municipality and a private developer will be conducted by members of the administration. In most cases, the council will not be informed until the matter goes to the planning board or a council committee for any special planning changes which may be required or to council for agreements required. In this situation, the council is not informed any sooner than the rest of the public. The mayor and/or executive committee, however, are often informed and may well have participated in the meetings with the developer without the knowledge of the rest of the council. With major developments, however, for example a major hotel development or a major commercial development,

the developer may request a private meeting with all the council members at a very early stage to present his plans to the council to see whether the council might be interested in encouraging such a development in the municipality. At the same time, the developer is likely to feel out the municipal councillors as to whether they would be willing to support any major zoning changes or servicing concessions which the developer considers necessary if the development is to proceed. Having received the views of council, the developer can then proceed to formalize his proposal to the municipality. If he does so, the matter will come before a public meeting. In smaller municipalities, such private meetings occur for almost all development matters. For example, a subdivision proposal, which in the larger municipality would be left totally to the appointed administrative staff to negotiate, would be discussed at a very early stage in a private meeting between council and developer.

Council members were careful to point out to us that these meetings are simply informative sessions in which the council is made aware of proposals for development; they do not, they said, make any commitment to the developers to support them. One may question, however, why the developer wants the meetings if he does not gain from them any feeling at the very least on what the reaction of the council members will be when the development becomes a public proposal. Indeed, in one of the municipalities a major issue arose recently when a private developer proceeded with a development proposal fully expecting council support because of what he termed "an agreement"

which had been reached at a private meeting with council; when the proposal became public, there was considerable public opposition resulting in the development proposal being defeated. This defeat, according to other members of the council and the developer, only occurred because some council members changed their position under public pressure.

These meetings are difficult to prohibit and may be necessary if needed development is to occur and be negotiated. Such meetings should therefore be allowed. In order to recognize the need for openness, however, the taking of votes should not be permitted. It would also seem appropriate that once a formal application is made with respect to a project about which meetings have occurred that all documents relating to the project be made public. This would ensure that the public and the members of council (where they were not involved) could quickly be brought up to date on all matters. As well, because of the perception of unfairness and the dangers of an early commitment it would seem appropriate to require and make available minutes of all such meetings.

c) Closed Municipal Councils:
Discussions Basically In Camera

We find that there is a gradual change from those municipal councils which are very strict about discussing only personnel, legal and

property matters in private through those municipalities which add other items to the list until one finally reaches those municipalities which discuss virtually everything in private meetings.

We found municipalities in which the committee of the whole meeting in private session (at a time different from that of the regular public council session) discussed almost all items before they went to a public meeting. Moreover, in certain municipalities the in camera committee of the whole meeting discussed confidential reports from in camera standing committee meetings. The bodies appointed by such municipal councils usually also meet in private.

The following is a description of the way in which such councils operate. The formal municipal council meets in public session. At these meetings, which last generally for approximately one and a half hours, a major part of the time is taken up in discussing communications which have been received[88] and then deciding whether to respond, to note and file or to refer it to the administration for a report which would go to the closed committee of the whole meeting. We were assured that the latter course of action is the one taken if the matter is at all controversial. The next to last item on the agenda (just before the passage of by-laws) is the resolutions

88 In one municipality we examined this involved reading aloud each letter received by the council.

emanating from the committee of the whole. This list of resolutions is usually passed without any discussion at all. The outcome of the vote on these items is always a foregone conclusion since it has already been decided upon at the committee of the whole meeting.

Such a municipality may also make frequent use of special meetings of the council to pass a by-law. Within a five week period one such municipality we examined had four special council meetings. These meetings were very short in length ranging, according to the minutes, from twenty minutes to thirty-five minutes. Clearly these were not meetings which involved discussion of any depth even though they were in each instance about items of major importance - including setting the millrate. In two instances, these special meetings were held within three days of a regularly scheduled council meeting. It appears that these meetings are used as opportunities to pass items on major issues with as little chance for the public to be in attendance as possible. These meetings in certain municipalities were held on a Friday afternoon at four or four-thirty in the afternoon. The likelihood of anyone attending, therefore, is very slight assuming they are aware that the meetings are occuring. Thus the regularly scheduled meetings in which the public is more likely to be in attendance are avoided.

The passing of a budget by such municipalities is another example of the use of this technique. First, the finance committee of council

examines the budget; this is done in a closed meeting, of course, since all committee meetings are closed. Then the committee of the whole discusses the budget giving the entire council the opportunity to go through the budget; this also is in a closed meeting. Finally the budget is passed and the millrate set in a public meeting. In one municipality, a meeting for this purpose was called for four o'clock on a Friday afternoon at which time the by-law setting the millrate was passed in a twenty-minute session. Obviously at that short public meeting there was no debate on the budget.

The following is the practice of the committee of the whole. Delegations may appear before the committee of the whole but the delegation cannot listen in on the other items being discussed and cannot even remain to hear the discussion on the item which it has raised. There usually are formal agendas for these meetings, but these agendas are rarely made available to the public. Often, no minutes are kept of these meetings other than the resolutions of the committee of the whole which come to the regular council meeting for approval. None of the background reports which went to the council at the committee of the whole go to the public meeting of council. Therefore, the public have no indication of the basis for the decision. Also, the resolutions do not indicate all the items which the council considered. In one municipality that we examined, a comparison of the agendas with the resolutions showed that over half the items on the agenda did not appear on the resolutions. These committee of the whole meetings are much longer than the regular council meetings -

usually extending for three to four hours.

Such examples are extreme, but they do exist. Of the eleven municipalities which we examined, two operated in this formally closed way. Moreover, many other municipalities, though not as extreme, do discuss in private meetings many items in addition to personnel, property and legal matters. We were given three reasons for conducting so much business in private:

(1) because the public might misunderstand the discussion;

(2) because the councillors and staff act differently in a closed meeting; and

(3) because councillors might be embarrassed by public knowledge and involvement.

We were often told that the problem with having the public aware of what is under consideration at too early a stage is that the public will not properly understand what is going on. It was feared that the public would interpret a proposal as the actual action which the council would be undertaking, whereas the proposal could change substantially before being finalized.

Another reason frequently given to us for closed meetings of council was that they will result in council members making better decisions because they will be more open and direct with each other and their staff. In addition their staff will be more open and direct with them.

In private there is less "posturing" or "grandstanding" by council members than in open council meetings. There is less animosity amongst councillors at closed council meetings than at the open meetings. Frequently, especially on controversial issues, divisions will be made to appear sharper at the public meetings than they actually are.

The appointed staff take a much more active role at the closed meetings, it is suggested. The staff feels freer to express its view very strongly, to argue for those views and to disagree with the actions of council than in a public meeting. Also, the staff members are less hesitant to contradict each other in front of the council members in private than in public meetings. The administration often will inform the council of matters that they would otherwise delay telling it about until the matter had been resolved or until it had become a crisis so that the administration could no longer conceal it. All these factors mean that council members receive information that they may not have received otherwise although in open councils, both staff and elected officials stated that there was no problem in staff giving advice in public and that the public discussion of staff's advice was accepted by all concerned. In private meetings councillors will often express opinions that they would not express in public. This is because of the insecurity of some members of council who may be acting in a part-time capacity and who may not be highly educated. Their fear is that the public might know more and make them look foolish. As a result, a councillor may be

unwilling to make a public statement about a particular development or developer or a particular public work.

Up to this point, we have been talking about formal closed meetings of council members. There are many municipalities, however, particularly the smaller municipalities, where even though the councillors can truthfully tell us that the meetings are not closed to the public, attendance of the public is very rare and in effect the council operates as though all business is conducted in private. The councillors blame the apathy of the public for a lack of attendance and are careful to point out to us that the public is free to attend. The apathy of the public is, however, bolstered by certain practices which discourage the public from attending - factors which are in the way in which the council has set up its own meetings. These factors are very important to our study since, whether used consciously or not with this objective in mind, they have the effect of making council business closed from the public.

A common practice in small municipalities is the lack of notice of the meeting and of a publicly known agenda before the meeting. As a result, the public does not know what items are going to be discussed that night and thus are not likely to attend. Indeed, in some municipalities the council members do not even know until they arrive at the meeting what topics they will be discussing that night. They are simply handed a sheet of paper at the beginning of the meeting

which lists the agenda. Even if an agenda is released beforehand (commonly on Friday for a Monday or Tuesday night meeting), in municipalities which are served only by a weekly newspaper, the public will not have the opportunity to be informed because most weekly newspapers appear on Wednesdays.

In some municipalities, the public in attendance at a council meeting are not even given a copy of the agenda and background materials. This makes it virtually impossible for members of the public to follow what is going on at the meeting and, therefore, they will not find the meeting very useful or interesting. This certainly will discourage public attendance.

Also, when an agenda is not known to the public in attendance it is possible for the chairman of the meeting to juggle the agenda putting off a more controversial item until the end of the meeting by which time the people in attendance have been worn down by boredom and, thinking there is nothing of interest being discussed this evening, have left.

Also, again especially in small municipalities where councillors are paid little money and are often quite difficult to get all together at the same time for a meeting (especially during spring and summer in farming communities), we found that special meetings often expand into dealing with numerous different functions. A special meeting of council will often be followed by a planning board meeting followed

by a special meeting to look at another item of business.

Another factor which makes meetings private even though they are formally public is the carrying out of meetings in places other than the council chamber. Again, this is something which is found more frequently in smaller municipalities. It is quite common practice for the council members to hold a committee meeting over lunch in a local restaurant or hotel. Not being highly paid, this way of holding a meeting to discuss an item is the least disruptive to the councillors' other business. Therefore they meet at noon, have lunch, discuss business and then go back to their jobs. A member of the public, even if by chance they know that the meeting is occurring, is going to feel very uncomfortable about going and pulling up a chair next to the council members at such a meeting.

It is not necessary to repeat here the details of what should be considered appropriate reasons for closed meetings. Those reasons considered valid are found in Chapter I. It is clear that the implementation of general provincial legislation would have the greatest impact on the municipalities with the practices described in this last section. Such legislation would not absolutely prevent the meetings of councils for informal discussion and the reaching of informal consensus. That is virtually impossible unless legislation is drafted as broadly as that in the state of Florida for example which requires all formal and informal assemblies of members of a body to be open to the public. This applies to meetings of a minority

of members so that it has been suggested that the public has a right to attend informal discussions or hear telephone conversations between two elected officials.[89] Even if it were possible to enforce such requirements, we are not convinced that it would be desirable. The legislation we are recommending would give municipalities some flexibility while clearly indicating that informal discussion and the reaching of informal consensuses are not appropriate actions and should not be countenanced by local officials.

The adoption of a municipal policy statement would perhaps be very beneficial to these relatively closed municipalities as well. Firstly, it would encourage a commitment to openness by involving the municipal councillors in drawing up guidelines and by allowing them to adopt a statement suitable to their own needs. Secondly, such a statement containing notice provisions as part of it would make the public more aware of the activities of the council and its various bodies. Such notice provisions and access to municipal meetings would encourage delegations to currently closed municipalities. Those municipalities ordinarily do not hear delegations because no one knows or understands what the municipalities are doing. A mandatory policy would ensure the opportunity to deputize and establish procedures for doing so.

89 Barnes, R. Government in the Sunshine: Promise or Placebo? (1971), 21 University of Florida Law Review 361 at 375.

d) Meetings of Committees of Adjustment and Land Division Committees

Committees of adjustment and land division committees meet in public to hold hearings regarding applications before them. Those applications are concerned with the enforcement of specific planning control on individual properties. The decisions are not policy-oriented. Often committees will conduct all deliberations in private or at least controversial deliberations in private. The ability to carry on deliberations in camera does not appear inappropriate because these committees must give reasons for their decision and are performing an adjudicative function rather than a policy-making function. Files of these committees are generally open to the public and no concern was expressed in our interviews with respect to them. In keeping with these adjudicative functions, it is important, however, that these bodies do not receive any information in private, that is apart from the public hearing.

2. Access to Information

The emphasis which has been placed thus far on what is discussed in public and what is discussed in private meetings is central to the discussion of freedom of information; for those municipalities which are most open in discussing matters in private are also the municipalities which are most open in giving out information. The

guide constantly given to us by senior administrators in determining whether a piece of information was public or not was whether it had gone to the council members in a public meeting. Indeed, it is fair to say that the practices of distributing written information parallel very closely the practice of open meetings.

1) Agendas: Agendas are generally made available to the public at the same time as they are available to the council members. The more open municipalities have a mailing list of people and groups which have requested the agenda to whom they are mailed. In most municipalities, it is necessary to go into the office to pick up the agenda. In more closed municipalities, the agenda is not available until the time of the meeting even to the council members. Some municipalities never really type up a formal agenda. Rarely is there a charge for the agenda although there is sometimes a charge for copies of the attachments to the summary sheet - correspondence, committee reports, administrative reports, all of which are part of the agenda.

The requirement for a municipal policy statement which includes provisions for agendas and notice of council meetings would ensure that these matters would be considered by municipal councils and that municipalities would adopt procedures most appropriate to their needs.

2) Minutes: In all municipalities the minutes are available at the clerk's office. Some municipalities make a point of also distributing the minutes to the local library system so that the public can view

them there. It is also general practice in smaller municipalities for the local weekly newspaper to print the entire minutes in the newspaper as their method of reporting on council happenings. These minutes are generally a complete and identical copy of the official minutes.

The content of the minutes is usually quite limited. It is simply a cryptic description of the motion, the names of the people who moved and seconded it and whether it was "carried" or "defeated". In some large municipalities minutes contain a great deal on debates and reports. Minutes of closed council or committee meetings are usually not made public, although there are exceptions to this practice.

A provision for access to all documents dealt with by the council would go a long way towards remedying the situation of very brief minutes being the only access to information about the deliberations of council. In addition, a policy statement approved by a provincial body could ensure a minimum standard and set a common form for minutes so that they would be a useful record of the deliberations of council. Moreover, a requirement that minutes of closed meetings be kept and published, without employee names where discussions were about employees, would ensure access to information that is currently not made public.

3) By-laws: The public may inspect any by-law and ask for and receive a copy of any by-law which the municipal council has passed. There may be a charge for a copy of the by-law; if it is a lengthy by-law, it is common practice among municipalities to charge a fee for copies. The greatest problem with respect to by-laws is the difficulty citizens have in finding and using them. Some municipalities have an index and consolidations for internal uses but these are not necessarily made public. It would appear useful to require the compilation of an official public index to the by-laws of all municipalities and require the official consolidation of by-laws at a minimum of every two years. In smaller and more rural municipalities, the need for such action is not as great but the task of doing so is also easier. In larger, more complex municipalities, a municipal policy on information could require a more up-to-date indexing and speedier consolidation for more important by-laws.

4) Reports to Council: Although reports do not have to be made public, the practice generally followed by municipalities is that any report that has gone to council in a public meeting is available to the public. This results in a considerable amount of information becoming available to the public and would seem to result in a substantial degree of openness where as mentioned earlier the meetings of council are open. There are a few reservations to be pointed out, however.

Information which goes to council members in private meetings is not available to the public under this guideline. In municipalities which discuss only limited matters, such as personnel, litigation and property matters, in closed meetings this would seem not to be a serious restraint upon the public's access to information. Limitations on access to these reports was justified in Chapter I. In those municipalities where most other matters are discussed in private meetings, however, using this guideline can result in the withholding of almost all reports from the public. It is common practice in these municipalities simply to send the resolutions of the committee of the whole to the public council meeting. We were told by some clerks that if a member of the public asked for a specific report that there was a good chance they would release it to the person. The public, however, is never aware that there was a report since there is no public place where the report is mentioned.

The requirement of a provision that all reports that have been dealt with by council in private, except for personnel reports and except for matters restricted by statute, be released upon public action being taken on the matter means that most documents will be available to the public even though they were dealt with in private. The public will have an opportunity to see the documentation before a final decision is made and to evaluate the actions of council based on that information.

In small municipalities written reports are very few. Usually the input from the clerk, building inspector and roads engineer are made verbally at the meeting of council. This advice from the administration is not, therefore, ever formally written down; the result, of course, is that the public do not have access to the information that was given to the council unless they were actually in attendance at the meeting.

Also, it is often difficult to obtain a copy of reports where reports are written since very few copies were made originally. Generally only enough copies are made for the council members and for members of the media. With small reports, this usually does not pose a problem since the administration is usually quite willing to make another copy when a request is made. If the report is a large one, however, and especially if it includes maps, they are likely to be very unwilling to make another copy. Requirements for open meetings would largely solve these problems while a municipal policy could make provision for the copying of reports in a way suitable to the needs of individual municipalities.

We have received a complaint related to the timing of the release of reports. The practice followed by municipal clerks is that reports cannot be made available to the public until they have been given to the members of council. There are two basic reasons for this. The first is that the administration is the servant of the council and, therefore, any work which it does is done for the council

members. Therefore, they should be the first to receive the information. The second reason is to save the council members from possible embarrassment. If the public has information which a council member has not received, he will be put into a very embarrassing position if someone questions him on it. Therefore, the standard guideline followed is that a report is not available until the council members have received it. What this generally means is that the public can receive it a few days before the council meeting at which it will be discussed. That is, at the time when the agenda is sent out to the council members. Some groups have complained that this does not give them enough time to examine the reports on a particular item and to do further research that may be necessary to defend their position. The practice of councils is to make an individual judgment on the merits of the citizen's complaint and if they feel that the citizen has not had enough time to prepare their case, the council may well defer the item for a later meeting. It is difficult to suggest any definite way to resolve this controversy. Some municipalities simply release reports to the public and the press before the council meeting; others do not. This decision would seem an appropriate one to be dealt with in a municipal policy statement since there appears no overriding provincial need for uniformity, nor any absolute answer to the timing question.

5) Financial Information: There are certain basic pieces of financial information which all municipalities make available to the public upon request: budgets, financial statements, assessment rolls,

the contents of tenders after the tendering date is closed. There are a few pieces of financial information which some municipalities make available and which others do not. One of these is tax arrears for an individual piece of property. Some clerks and/or treasurers said that the fact as to whether or not the taxes were up-to-date on a piece of land in the municipality should be confidential. There are also differences in the way in which requests for information on salaries are handled. Some municipalities provide actual salaries. Most municipalities respond to such requests by giving out the salary range for a particular position but by not giving the actual salary paid to an individual. Other municipalities will give no information on salaries. The reasoning for this is to protect the privacy of the individual. Those municipalities releasing salary information feel that since the public pays for the salaries of these people, the public has the right to know the levels of the salaries. There does not appear to be any overriding need for uniformity in these matters. Access to financial information will be ensured with general provincial legislation while salaries of individuals, although not categories, would be exempt under personnel matters.

One complaint which we received was that the auditor's comments on the financial statements in which he criticizes procedures and practices are usually marked confidential by the auditor and are not released with the financial statements. This problem would be resolved with general legislation in that any report to council would have to

be made public unless exempted. Such confidential reports would not be exempt unless they contained the names of employees.

6) Legal: The policy with regards to files being held by the solicitor is that no one has access to them; this could continue in a system giving access to information received by council.

7) Personnel: The policy followed by municipalities on personnel files is that they are not available to anyone except the person who is the subject of the files; this should continue.

8) Social Services: Social services files are being evaluated separately by the Commission and should be subject to separate legislation.

9) Planning: Files containing plans and drawings for applications for plan changes, rezonings, plans of subdivisions and committee of adjustment and land division committee matters are generally open to the public although copying is not allowed. Since members of the public often have an interest in what is to be constructed in their community and this practice has caused no difficulties, it should be allowed to continue. This could be provided for under a municipal policy statement.

B. School Boards

1. Meetings

Many of the school boards in Ontario make frequent use of private committee of the whole meetings. The reasons most often given for holding such meetings were, as with municipalities, threefold: to discuss personnel matters, legal matters and property transactions. The reasons given for such in camera meetings were similar to those discussed above for municipal councils.

With some school boards, there was very little use of private meetings except for the above matters which are narrowly defined by those boards. However, in others, committee of the whole meetings were frequently not confined to discussion of just these three types of matters and almost all matters were discussed in private including the competency of board members, budgets, and school closings. As with some municipal councils, these boards formalized in public meetings without discussion, decisions which had already been arrived at in closed sessions.

We found a procedural system used on a regular basis by several school boards for conducting private and public meetings which was rarely used by municipal councils. School boards that rely heavily on private committee of the whole meetings for making decisions often

hold those meetings during the regularly scheduled public meeting. Often the board will meet formally to pass certain basic items such as minutes and correspondence, and then adjourn into a private committee of the whole meeting where, in effect, the important business of the evening is discussed. This is almost invariably the longest part of the meeting. At the conclusion of this in camera meeting (it is frequently midnight at this point), the board reconvenes in a public session to pass the resolutions emanating from the private meeting which has just been held. This is completed in a few minutes and the board meeting is adjourned.

Such a system makes the board meetings rather useless to the public. The public passage of the most important items is usually late at night after a long meeting most of which the public was not allowed to attend. These factors combined with the fact that usually there is no public announcement of which items will be discussed in the committee of the whole meeting mean that it is relatively easy for school boards to finalize major items without the public being aware that the matter was even under consideration.

It is clear that the type of provisions that we have suggested for assuring openness of meetings at the municipal council level are also necessary for school boards. A clear limitation by provincial legislation and school board policies on the types of items that may be discussed in private would alleviate the situation just described. In addition, the school board policy could contain provisions assuring

that private meetings would not be scheduled for the midst of a public meeting. School board policies are needed to ensure all deputants are treated alike because one very open board, when faced with a difficult political problem, was found to refuse to listen to a deputant that it no longer wished to hear from.

2. Access to Information

Corresponding to this extensive use of closed meetings by some boards was a high degree of secretiveness with information. The most outstanding example of this situation was with one school board where the secretary was not even able to give us the names and addresses of the elected trustees without obtaining the director's approval. However, most boards have brochures describing the Board, its services and its elected and senior appointed officials.

We found inadequate access to the school board budget in some cases. Many boards happily provided access to the whole budget. But others release only a two page summary. A budget which is available to the public only in such highly generalized categories as a summary of that nature presents does not give people much indication of how their money is being spent. The school boards which make it a policy not to release the whole budget gave us three reasons for not releasing the budget in a more complete form. Firstly, they said that the detail contained in it with regard to salaries was not

something which individual citizens should have access to. Secondly, they said that it was only a budget, that is, a statement of intended expenditures and, therefore, would not necessarily correspond exactly to what was actually spent during the year. Thus the public could be misled by the budget. The third reason given to us for concealing the details of the budget was that it would weaken the negotiating position of the school board on matters such as teacher contracts, property acquisitions and bus contracts if these details were available.

Most school boards do, however, allow the public to see the entire budget in all its details. None of the people that we talked with associated with these boards said that it did have a negative result upon their bargaining position, however. One of the most open boards that we examined refused to divulge information on a property acquisition after it had been approved in an open meeting of the Board. Legislation on access to information would remedy both of these problems.

All boards make minutes of public meetings available. However, access is sometimes discouraged because the authority to release minutes is not delegated to administrative staff. However, in some instances, positive efforts are made to have the minutes more easily available to the public. Some boards post the minutes in the teachers' room in each of the schools. Some send the minutes to each of the public libraries in the municipalities covered by their schools.

The private minutes of the committee of the whole are handled in strikingly different ways by the school boards examined. We found two instances in which the private minutes of the committee of the whole are in the same minute book as the minutes of the board and are fully available to the public even though these meetings are closed to the public. The more common procedure, however, is to say that since it was a closed meeting the minutes of the meeting will not be public. It was explained to us that the resolutions coming out of the committee of the whole appear as a public document at the next board meeting and that, in effect, one does have access to the minutes of the meeting of the committee of the whole.

In those cases where boards do not have formal committee of the whole meetings but have instead caucus meetings, which in effect perform the same function, minutes are sometimes not taken.

We also found wide variation in the form of the agenda material which is made available to the public including to the press. Some agendas are made available in advance to the press and the public at the same time as they are sent to the trustees and contain all the material which goes to the trustees. In other cases, the agendas made available to the public and to the media do not contain any of the background reports which go to the members of the board of education.

All these problems with access to information and meetings can be largely resolved by providing a minimum standard of openness and

requiring a policy on information. There is little that distinguishes the school boards from municipal councils in the area of openness and information. The provisions for both can be the same. One exception to this statement is the keeping of student records. Virtually all persons interviewed stated that present legislative provisions and practices respecting those records were satisfactory. This matter is under study by the Personal Records/ Privacy Project of the Commission. One further exception is the relationship of school boards to their staff. In many situations we found boards, board members and French language advisory committees experiencing difficulty in obtaining information from administrators. Some administrators clearly control the flow of information to the boards and to individual board members and the committees. A policy on the requests for information from staff, on how requests should be made, on how soon the information should be given and on what requests need board approval, would appear particularly useful for school boards.

C. Police Commissions

Police commissions are generally the most closed of all municipal institutions and provide the least access to information. Although there have been attempts by some commissions to encourage public interest in their commission, this is rare and has been

unsuccessful. The commissions generally discuss most matters in private and disseminate very few documents.

Generally speaking the main reasons for the commissions considering matters in camera are as follows:

(a) to avoid prejudicing the position of the commission in labour negotiations;

(b) to avoid making public matters that involve litigation;

(c) to protect the reputation of employees and others; and

(d) to protect the security of the force or some other force and to ensure that criminals are not aided by information from the force.

As a result, many items are dealt with by the commission in private. All personnel matters such as promotions, grievances, termination of employment, collective bargaining and discipline are dealt with privately. Included in this category are reports by the chief of police on the discharge of firearms by police officers. Such matters should be dealt with in this way unless the individual involved requests a public discussion of his case and as long as a report of private deliberations protecting the reputation of individuals are made public. The matter of formal complaints against members of police forces and the dealing with those complaints was not investigated as it is a field far beyond mere access to information. It would seem, however, that the public interest in ensuring the proper investigation of complaints outweighs the need for privacy in these matters. We make no specific recommendations with respect to this matter although these matters in most forces are dealt with publicly.

In some situations, boards of police commissioners may deal with criminal records of the public and records of former members of the force or other members of the force as well as possible public liquor licence offences. These are generally dealt with in camera. Provisions for such matters to be dealt with in private should be left to the Commission's more general study on privacy protection problems and governed by specific legislation. It should be stated, however, that a wide exemption for such matters might mean that the mention of any individual's name could be used as an excuse to move any discussion into private.

Another important category of items discussed in private is that of security. Items relating to investigative proceedings, payment of rewards, co-operation with other forces, the use of police radio and computer data and the purchase of special crime detection equipment are generally cited as matters which should be discussed in camera. Although the category of "security of the force" is as broad as the term "national security" and can be criticized as an exemption which makes freedom of information meaningless, there clearly appears to be a need for such an exemption. Rather than specify the parameters of the exemption in legislation, it would seem appropriate for the various forces to limit the use of the exception by outlining its limits in a policy statement which is reviewed by a provincial body as are the statements for municipalities and school boards. Such an approach would make clear the general legislative presumption in favour of openness but would allow exceptions and the policy could

put limitations on those exemptions.

Solicitor and client matters and property acquisitions are also currently dealt with in private. This appears to be an appropriate course of action although the limitations imposed on municipalities and school board in this respect should be imposed on police commissions.

In summary, there appears to be little in the present practice of police commissions to suggest that they should be dealt with differently from municipalities. The only exception to this is the provision for commissions to deal with security matters in private. The policy statements of police commissions should, like those of the municipalities, contain references to delegations, notice and reports in private meeting; they should also provide limits on the "security of the force" exemption.

CHAPTER IV

RECOMMENDATIONS

In our previous chapters we have suggested that there is a need for openness and access to information in local government, and have suggested criteria for evaluating that openness and access. We have shown, moreover, that neither the legal structure governing local governments nor the practices of local government meet those criteria. Throughout that discussion we have suggested provisions for assuring openness and access. We now deal with those provisions in a comprehensive way.

The new legislative scheme we are proposing is an attempt to combine minimum provincial standards of openness with local involvement in supplementing and providing detail for those standards. The problem of access to information is both a provincial and a municipal one. Therefore, it must be dealt with by both levels of government. The province must set minimum standards and local authorities must ensure that the implementation of those standards is economical, and practical and suited to their particular locality.

It should be noted as well that local involvement is crucial for other reasons. In examining a cross-section of municipalities in the

province, we saw great variations in the practice of openness although all municipalities are governed by the same legislation. We saw some municipalities and some local authorities totally committed to an open system of government; these bodies abided by their own exemptions to openness in a strict and forthright way. We saw others that were totally closed and which did not want the public to have access to their activities. The differences indicate that much of what is practised with respect to openness and access is not the result of specific legislative requirements, government structure, a party system,[90] or provincial control. Openness and access are in a large part the result of an attitude and a frame of mind. They depend in part on formal institutions and legislation but they also depend on a commitment that is fostered by local values. Those values are developed and nourished by a strong local press and a local citizenry eager to participate in the governing of itself. Indeed, we saw that in many cases the openness of a council or school board depended directly on the local press and/or citizens groups.

90 A party structure appeared to exist in some municipalities and not in others. Some people interviewed suggested that municipalities provided more access to information because there were no parties; others suggested the lack of parties meant less probing and therefore less access to information. The reality would appear to be that the existence or non-existence of parties seems to have little impact on openness and access to information.

Because of this, provincial standards alone cannot guarantee openness in government. A meeting is easily held in secret - no matter what legislative provisions exist. A legislative enactment regarding access to documents and an index for those documents is only as effective as the commitment of the individuals distributing the documents and preparing the index. It is impossible to consider in advance all possible interpretations of exemptions to access to information. The appropriate interpretation of those exemptions depends largely on the good faith of local officials. Therefore, local governments must be involved in providing for access and openness.

Provincial standards, however, are important. They set the framework within which local decisions respecting openness are made. They suggest the values that we as a society in Ontario consider important, and they can provide more of a guideline than is currently found in the law. They can set the approaches that must be followed by local decision-makers. Provincial legislation is important as well in providing an enforcement mechanism and in providing a remedy where standards are breached.

The scheme which we are proposing therefore is one involving both provincial and local governments in defining the parameters of freedom of information at the local government level in Ontario. It, as well, provides for two basic, but qualified, general rights: the right to attend deliberations, and the right to obtain information. These rights are to be qualified by the need to discuss in private and

restrict access to information on matters which pertain to: the discussion of named employees, the election of a chairperson or the head of a body, the election of an executive committee, the discussion of contract negotiations with employees, the discussion of property transactions, the discussion of possible litigation settlements, the discussion of matters which deal with the security of police forces and matters specifically dealt with in other legislation.

In order to accomplish this, there should be basic provisions giving the public the right to attend the meetings of any local government body if the meeting involves the members of the body coming to a formal or informal decision among themselves on an item or in a committee making a decision which will go on to the rest of the body.

Secondly, provincial legislation should provide that all information received by a local body plus any other factual information in the possession of the body's administrators be available to the public.

These provisions should apply to all local authorities in Ontario, both those whose members are directly elected by the public (municipal councils, school boards, and in some cases utilities commissions) and any appointed government special purpose bodies that are directly

supported by municipal tax dollars.[91] The committees of these bodies, including committees of the whole and executive committees, should be subject to the same demands for openness as is the body.

These are the basic provisions for access that provincial legislation should guarantee for all people in Ontario. In addition, each local body should be required to pass a policy statement elaborating on how it will fulfill those requirements and deal with matters not governed by the provincial legislation such as procedures for delegations and notice of meetings. Moreover, the local bodies should be allowed to expand access to information or meetings, unless specifically prevented from doing so by other legislation dealing with particular personal matters such as health records, criminal records and welfare records.

The intent of this municipal policy statement is to give the municipal body the opportunity to draw up its own guidelines, taking into account the special situation of its area. This policy statement must go beyond simple statements of intent to specific descriptions of how the body will behave in particular situations. If the policy

91 There is often confusion as to whether some special purpose bodies are really part of municipal government or are actually agencies of the provincial government. If the body receives any of its funding through municipal property taxes, it should be designated as part of municipal government. This means that bodies such as the boards of health, conservation authorities, housing authorities, children's aid societies and police commissions would be covered by these recommendations. As well, all local bodies referred to in The Municipal Affairs Act, R.S.O. 1970, c. 118, s. 1(d) should be subject to freedom of information legislation.

statement does not have a considerable level of detail, it will not be very useful in giving the members of the public, administrative staff and elected and appointed legislative officials an understanding of appropriate conduct under the legislation.

Because of the provincial concern in access to information mentioned above, and because of a need to ensure meaningful and local policies within the provincial guidelines, we are recommending that a provincial agency review the policy statement of each municipal body. This reviewing agency should receive comments from the public on the proposed policy statement and assess the statement in the context of the provincial legislation for openness. It should have the power to make any changes in the statement which it considers necessary This function could be assigned to the Ontario Municipal Board. This body has already established mechanisms for receiving public input as it already has an important role in reviewing municipal policies. In addition, its members have had considerable connection with municipal government and with citizens concerned about the impact of municipal government upon their lives. It would, therefore, probably be the best body to review municipal policies. Although it has not developed an expertise in access to information one of its main functions has been to provide a hearing with respect to municipal decisions.[92]

92 See: supra notes 74-79 and accompanying text.

The rest of this chapter explains more precisely these basic rights and the exceptions that should be allowed or required, giving reasons for our recommendations in each instance. It also points out the minimum provisions that should appear in provincial legislation and the policies which should be defined by the local bodies in their individual policy statements on open meetings and access to information.

A. Open Meeting Provisions

1. General Requirement for Openness

Any meeting of a local government body should be open to the public if the meeting involves a quorum of the members of the body coming to a formal or informal decision among themselves on how to deal with any matter or if the meeting involves a quorum of a committee of the body making a formal or informal decision on a matter which will be dealt with by the rest of the body.[93] The reason for this recommendation is to ensure that discussions of bodies will be in public and that members of local authorities will not come to secret agreements on how to vote.

93 A recommendation similar to this appears in Open Meeting Statutes: The Press Fights for the "Right to Know", (1961-62), 75 Harvard Law Review 1199 at 1220.

2. Exemptions from the General Requirement

Provincial legislation should provide that meetings held to discuss the following items may be excluded from the above requirement and may be discussed in private meetings including the arrival at an agreement on a decision:

(a) personnel matters where a named employee or possible employee is involved, unless the individual has requested that the matter be discussed in a meeting open to the public;

(b) election of the chairperson or head of the body;

(c) election of the executive committee of the body;

(d) contract negotiations with the employees;

(e) property acquisitions and sales;

(f) discussions of possible litigation settlements;

(g) matters that if a police commission were to discuss in public would be injurious to security or investigation procedures;

(h) matters that are specifically restricted by other legislation which may result from the Commission's ultimate recommendations with respect to problems of privacy protection.

It should be noted that these exemptions, except for (a) and (h), should not be mandatory but merely permissive.

The reasons behind allowing these exceptions have been discussed in Chapter I of this Report. Briefly stated, they are protection of the individual concerned (personnel matters), facilitating of the

leadership role (election of the chairperson and executive committee) and protection of the public interest (employee contract negotiations, property acquisitions and sales, litigation settlements and policing matters).

The suggestion that a personnel matter can be discussed in private only when a named employee or applicant is involved is in order to ensure that matters such as departmental organization, dress codes, residency requirements do not qualify as personnel matters that could be discussed in private. The purpose of the exception is to protect reputations of employees only. Members of the local bodies should not be included in the exception because they are accountable to the public while their staff is not.

We have said that a body should be able to choose its chairperson or executive committee in a closed session. This exception has not been extended to include other appointments that are made by local authorities because those appointments are not to positions of leadership.[94]

The exception suggested for litigation matters is restricted to litigation settlements only, because the general discussion of the

94 In some municipalities appointments to committees of council and to other bodies are made at the discretion of the head of council. In these cases, the appointments involve a simple announcement and no discussion in public. This situation would not be affected by our recommendations.

merits and demerits of taking legal action should be held in public. The exception for security in policing matters is required in order not to interfere with the function of police forces.

3. Final Action Provision for Matters Discussed in Private Under the Exceptions

Whenever a municipality makes a decision with respect to one of the above matters in private, legislation should require that it confirm that action in public. Such a provision ensures the protection of privacy on the matters listed while providing public knowledge of those decisions.

4. Access to Minutes and Documents of Private Meetings Held Under the Exceptions

Legislation should require that minutes be kept of meetings held privately under the exceptions. The legislation should further require that all minutes and reports, with certain exceptions, discussed in private be available to the public when final action is taken. The reason for having minutes and reports available is to allow the public to evaluate the actions of the body. Once deliberations are completed and an agreement on a decision is made in private, there is no need to

maintain secrecy with respect to most deliberations or documents. There are, however, situations in which local authorities should be able to restrict the information made available after discussions are held and a decision is made in private. Equipment purchases for police forces and employee dismissals are two such situations because full disclosure might prejudice the force or the employee. Local authorities, therefore, should be able to make exemptions in their policy statements to the provision that all minutes and documents be available to the public.

5. Municipal Policy Statements: Contents on Open Meetings

As mentioned earlier each municipal body should be required to adopt a policy statement which should be approved by the province. Part of that statement should deal with open meetings. The statement should contain policies on matters not legislated by the province such as procedures for delegations, notice for meetings, locations of meetings, distribution of agendas and minutes, procedures for the holding of special and private meetings and the publishing of reasons for holding such meetings and detailed procedures on how minutes and documents of private meetings will be prepared and distributed. Included in this should be any exemptions to the provision that all minutes and documents of private meetings be made available. In addition if a local body wishes to discuss in public matters which

the legislation states may be dealt with in private, the policy statement should make such a provision. There should be no provision to override privacy requirements which are mandated in other legislation as a result of the Commission's Personal Records/Privacy Project.

Finally, the use to be made of provincial exceptions to open meetings should be clearly described in the policy statement so that the provincial reviewing body will have the opportunity to assess the local body's practices and its interpretation of the exemptions.

6. Other Private Meetings

It is not necessary to go to the extreme of prohibiting any meetings of the body or of two or more of its members in private. It would be virtually impossible to prohibit such meetings. Closed meetings may be used as information receiving mechanisms at a very early stage when a matter has not yet approached the time at which the body will have to take an action. For example, an exploratory meeting between developers and a municipality for the exchange of information in private is often necessary if development is to occur. Often staff wish to advise councils or committees of problems so that they can contemplate action in advance of outside pressure. This should not be prevented. Legislation should, however, require local bodies

in their policy statements to determine whether such meetings can or cannot be held and to set out procedures for reporting on such meetings. Those procedures should include provisions on access to the reports and minutes of such meetings.

7. Caucus Meetings

Private caucus meetings of body members should also be permitted. Some members of a municipal council may decide that they have a common political perspective and may wish to meet together to discuss positions they should take on particular issues and to formulate policy proposals and strategies for having those proposals passed by the body. In effect, these groupings are similar to the political parties found at the federal and provincial levels of government and should be allowed to caucus in private under the open meetings provisions. It is necessary to be sure, however, that the term caucus is not used, as it now is by some local government bodies, as the equivalent of a meeting of the committee of the whole. The provincial body approving local policy statements regarding closed meetings will have to ensure that caucus meetings are not prohibited by the municipal policy statement.

8. Committees of Adjustment and Land Division Committees

Committees of adjustment and land division committees should be allowed to continue to make decisions in private with written reasons being given for their decisions. Legislation should provide that they receive no information in private. The files of the committee should, by law, be open to the public.

9. The Statutory Powers Procedure Act

The present rights to a public hearing as afforded by The Statutory Powers Procedure Act in matters where individual rights are affected should not be altered.

B. Access to Information Provisions

1. General Access to All Information Received by Decision-Makers

Each member of the public with certain exceptions should be entitled to access to all the information that a local body receives, no later

than the time that the body or its committees publicly receive it. This is a very important provision, for it means that the public will know the basis which the members have for arriving at their decisions and will have the opportunity to comment on and add to that information. Since, as discussed earlier, municipal bodies do not have the power to delegate their authority to administrative staff, all but the most minor decisions must be made by the elected or appointed members of the body in a formal meeting. Information will be available on almost all local decisions. Staff, however, will be able to develop policy free from public scrutiny because only final reports reach local government bodies.

2. General Access to Factual Information and Consultants Reports

Regardless of whether or not they have been reviewed by municipal legislative bodies, legislation should provide with certain exceptions, that descriptions of the administrative organization, copies of administrative procedural manuals, any factual information that the administration has and completed consultants reports should also be

available to any member of the public.[95] Knowledge of administrative organization and procedure is often very important to individuals in order for them to be able to obtain the service that they require from a municipal body with which they are dealing.

Since final reports which have been sent to municipal bodies do not necessarily contain all the facts which an individual may be interested in examining, access to factual information is important. It should be made available even if found in draft reports. This right to receive any factual information should not extend to a right to read the opinions of the members of the administration which are found in internal reports or memoranda that have not gone to the members of the decision-making body. The requirement that such opinions be released could interfere with the development of policies within the administration.

All completed consultants reports, whether they have gone to the municipal body's members or not, should be made available to the public. This access should extend not only to the factual information

95 An example of legislative provision now requiring the release of all factual information but not all opinions is Washington State's Public Records Disclosure Act: (Wash. Code 47.17.010) "Factual staff reports and studies, factual consultants' reports and studies and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others".(Wash. Code 42.17.260.e)

contained in the consultants reports, but also to the opinions and recommendations contained in those reports as these reports are specifically commissioned by the local authorities. Local authorities should be permitted, however, through their policy statements to provide for the delay of the release of consultants reports for a specified period of time in order to allow the administration some time to read, assess and prepare comments on such reports before they are made public. Where such a delay is allowed, however, the policy statement should require the reports to be released prior to the consideration of them by the particular authority.

3. Access to Information by Decision-Makers

These provisions for access to information which has not gone to the municipal body are for the benefit of individual members of that body as well as the public. The body as a whole always has the right to demand information from its employees. Individual members of that body, however, do not have that power unless they can obtain the support of the other members of the body and have a motion passed requesting the information. These recommendations would, as a result, strengthen the access of an individual on a decision-making body to factual information and consultants reports. Moreover, local authorities in their policy statements should be able to establish procedures for the requesting and receiving of information from staff by individual decision-makers in order to facilitate the receiving of information by individual decision-makers. For example, a body may wish to provide that individual

members' requests for information do not need to be approved by a senior administrator, or that information given in response to a request by one member be given to all members of the body.

4. Exceptions to Access to Information

The following exceptions should be made to the requirements for releasing information:

(a) personnel files on an individual employee or applicant for a position should be available only to specifically designated staff and to the individual who is the subject of the file;

(b) architects and engineers drawings filed with the municipal body should be available for inspection but should not be copied for distribution to a member of the public;

(c) the police commission should include in its policy statement provisions for withholding information that would be injurious to the security or investigation procedures;

(d) information on contract negotiations with employees, property acquisitions and litigation settlements could be withheld from the public until the item appears on the agenda for a public meeting of the municipal body;

(e) information, the availability of which is restricted by other legislation.

The reasons for each of these exceptions have been discussed in Chapter I and earlier in this Chapter under open meetings. Simply stated, they are protection of individual privacy (personnel files), protection of individuals or companies (architects' and engineers' drawings) and protection of the local authority (security information, employee negotiations, property acquisitions and litigation settlements).

In addition, there may be provincial statutes and regulations regulating the release of certain types of information because of personal privacy concerns. For example, The Education Act contains provisions limiting access to student records. Provisions of this nature should continue to apply to municipal bodies as should any specific restrictions suggested by the Commission's Personal Records/Privacy Project.

5. Municipal Policy Statement: Contents on Access to Information

The municipal policy statement should deal with access to information in addition to open meetings as discussed earlier. It can contain policies on the preparation and form of minutes, the distribution of reports, the languages used in the publication of reports and other matters relating to information. The policy statements would, in fact, be a synthesis of the local authority's policies on both access to information and open meetings as these are closely tied together.

6. Information Index

The local authorities should be required to prepare an index of reports held or prepared by the body in order to ensure that individuals and

members of the authority have complete knowledge of the existence of such reports and information.

The form of the index will have to be specially adapted to the types and amount of information which each body has in its possession. Likewise the methods of maintaining this index will have to be particular to each body. All these matters should be outlined in the policy statements on open meetings and access to information.

7. Form of Budgets

Budgets should be divided into categories that allow the public to determine the amount of money going into each programme. In the case of municipal councils, The Municipal Act, in section 307(4), now provides that the provincial government "may prescribe the form of estimates to be prepared by council". Similar provisions should apply to all local authorities. In doing so, the provincial government should have as its objective making budgets more understandable to the public. This is of special concern with respect to police commissions.

8. Indexing and Consolidating By-laws

Each local authority should be required by law to have an index of by-laws and to consolidate their by-laws every two years in order to make by-laws more accessible.

9. Cost of Information

Legislation should allow municipal bodies to charge for information distributed. The charges, however, should not exceed the actual cost involved in reproducing the material requested. These charges should not include any of the original costs involved in creating the report. The policy statement should set out the basis for the charges, if there are to be any.

10. The Ontario Municipal Board

The Ontario Municipal Board conducts public hearings on many matters. To facilitate the sharing of information among the interested parties, legislation should provide that the Ontario Municipal Board require all documents or reports that any participant intends to present at

the hearing be filed with the Ontario Municipal Board in advance. Everyone should have access to that file prior to the hearing. This provision should not preclude additional written material being presented at the hearing, but, in this case, the other parties should be given the opportunity to examine such material in advance.

The communities affected by Ontario Municipal Board decisions are often at a considerable distance from the Ontario Municipal Board offices in Toronto. To facilitate public access to this information, an arrangement should be made that will provide in advance an opportunity for examining that file in the community where the hearing will be held by sending copies to the clerk of the appropriate municipality. In addition, copies should be available at all times in the Ontario Municipal Board Offices so that interested persons can have access to the files at the same time as a Board member.

C. Enforcement

The present way in which municipal by-laws may be attacked is through an application to quash[96] the by-law or for judicial review.[97] Under

96 The Municipal Act, s. 241. There are similar provisions in legislation governing metropolitan and regional municipalities.

97 The Judicial Review Procedure Act, S.O. 1971, c. 48.

both methods arguments are largely the same, although an application for judicial review does not have a time limitation. Also, it can be used to attack the decisions of local government bodies other than municipal councils. Where a by-law is ultra vires it can be quashed or declared void. It is clear that local decisions can also be declared void for a failure to follow the rules of natural justice if the local authority is acting in a quasi-judicial capacity.[98] This approach to controlling municipal jurisdiction appears to have functioned well in the past and it would seem appropriate therefore to apply it to the area of freedom of information.

Where a municipality breaches the legislation regarding openness and access to information or breaches its own policy on these matters, any resident to the municipality should be able to bring an application to quash such a decision under section 241 of The Municipal Act, or to seek judicial review. With respect to breaches by other local authorities the right to an application for judicial review should be provided. If the latter approach is taken, a declaration that the local action is void and illegal and an injunction prohibiting the authority from taking action would be the remedy. It would also appear appropriate to enable the courts to order the release of a document which is a public document under the legislation or policy

98 See: Wiswell v. Corp. of Greater Winnipeg (1965), 51 W.W.R. 513 (S.C.C.).

statement. A criminal sanction, however, is not an appropriate remedy given the difficulties in ascertaining who in fact has breached the legislation and whether there was any mens rea in so doing. The need to rely on the good faith and trustworthiness of all those involved in local government also means that the criminal sanction is ineffective and inappropriate.

These methods that we have recommended for enforcing openness and access to information are not likely to be frequently used. The basis upon which we are relying for assuring open government at the local level is the commitment of local appointed and elected officials and the expressed desire of the local people.

APPENDIX A

INTERVIEWS

1. Members of Government Bodies

Mr. Allan	Chairman, Frontenac County Board of Education
Mrs. Baskin	Trustee, Hamilton Board of Education
Mr. Burr	Alderman, City of Windsor; Member, Windsor Planning Board
Mr. Campbell	Councillor, Regional Municipality of Hamilton-Wentworth; Commissioner, Hamilton-Wentworth Police Commission
Mr. Charrette	Chairman, Essex County Roman Catholic Separate School Board
Mrs. Collie	Chairman, Borough of Scarborough School Board
Mr. Cosgrove	Mayor, Borough of Scarborough
Mr. Crombie	Mayor, City of Toronto
Mr. Cunningham	Chairman, Police Commission, City of Kingston
Mr. Dandy	Trustee, Borough of Scarborough Board of Education
Mr. Derstein	French Language Advisory Committee, City of Toronto Board of Education
Mr. Duncan	Chairman, Leamington Planning Board
Mrs. Eayrs	Alderman, City of Toronto
Mr. Faubert	Alderman, Borough of Scarborough
Ms. Fish	Alderman, City of Toronto

Mr. Flynn	Member, Municipality of Metropolitan Toronto Police Commission, Mayor, Borough of Etobicoke
Mrs. Fraser	Trustee, City of Toronto Board of Education
Mr. Garreston	Alderman, City of Kingston
Mr. Givens	Chairman, Municipality of Metropolitan Toronto Board of Police Commissioners
Mr. Godfrey	Chairman, Municipality of Metropolitan Toronto
Mr. Holliday	Member, Committee of Adjustment, City of Windsor
Mrs. Jones	Chairman, Regional Municipality of Hamilton-Wentworth
Mr. Keyes	Mayor, City of Kingston
Mr. Leckie	Chairman, City of Toronto Board of Education
Mrs. McKenzie	Alderman, City of Kingston
Mrs. Meagher	Trustee, City of Toronto Board of Education
Mrs. Misner	Trustee, Dryden Board of Education
Mr. Morrow	Councillor, Regional Municipality of Hamilton-Wentworth; Commissioner, Hamilton-Wentworth Police Commission
Mrs. Nichols	Member, Borough of Scarborough Board of Education
Mr. Olson	Reeve, Township of Rochester; Councillor; County of Essex
Mr. Page	Trustee, Windsor Separate School Board
Mr. Potts	Trustee, Dryden Board of Education
Mrs. Riddell	Alderman, Borough of Scarborough
Mr. Rowat	Mayor, Town of Dryden

Mr. Sewell	Alderman, City of Toronto
Mr. Shea	Chairman, City of Toronto Planning Board
Mr. Shub	Chairman, Ontario Municipal Board
Mr. Simpson	Chairman, Windsor Board of Education
Mr. Smith	Alderman, City of Toronto
Mr. Sparrow	Alderman, City of Toronto
Mr. Wagenberg	Alderman, City of Windsor; Member, Windsor Planning Board
Mr. Warrington	Member, Frontenac County Board of Education
Mr. Weeks	Mayor, City of Windsor; Chairman, Windsor Police Commission
Mr. Woodbridge	Trustee, Essex County Board of Education
Mr. Yakopich	Reeve, Township of Malden; Councillor, County of Essex

2. Members of Staff

Mr. Adamac	Clerk, City of Windsor
Mr. Adamson	Chief of Police, Municipality of Metropolitan Toronto
Mr. Agnew	Commissioner of Finance, City of Windsor
Mr. Angus	Personnel Director, City of Windsor
Mr. Armstrong	Regional Co-ordinator, Regional Municipality of Hamilton-Wentworth
Mr. Atkins	Commissioner of Planning, City of Windsor
Mr. Beaudoin	Property Director, City of Windsor

Mr. Bisbee	Secretary-Treasurer, Land Division Committee, Regional Municipality of Hamilton-Wentworth
Mr. Bower	Commissioner of Planning, Municipality of Metropolitan Toronto
Mr. Brennan	Director, Hamilton-Wentworth Roman Catholic Separate School Board
Mr. Brown	Director, Municipality of Metropolitan Toronto Board of Education
Mr. Burridge	Deputy Commissioner of Parks and Recreation, City of Windsor
Mr. Caldwell	Clerk, Town of Leamington; Secretary, Leamington Police Commission
Mr. Callow	City Solicitor, City of Toronto
Mrs. Caza	Secretary-Treasurer, Land Division Committee, County of Essex
Mr. Consens	Treasurer, City of Kingston
Mr. Cramp	Clerk, County of Essex
Mr. Curran	Social and Family Services Administrator, County of Essex
Mr. Doyle	Director, Essex County Roman Catholic Separate School Board
Mr. Easton	Commissioner of Planning, Borough of Scarborough
Mr. Field	Director, Windsor Board of Education
Mrs. Gallipeau	Regional Clerk, Regional Municipality of Hamilton-Wentworth
Mr. Henderson	Clerk, City of Toronto
Mr. Hewitt	Deputy Commissioner of Planning, City of Windsor; Secretary, Windsor Planning Board
Mr. James	Archivist, City of Toronto

Mr. Joy	Municipal Solicitor, Municipality of Metropolitan Toronto
Mr. Kellerman	City Solicitor, City of Windsor
Mr. Knight	Superintendent, Windsor Separate School Board
Mr. Kruger	Chief Administrative Officer, Municipality of Metropolitan Toronto
Mr. Lane	Deputy Chief, Hamilton-Wentworth Police Department
Mr. Leuthwait	Assistant Administrator, Committee of Adjustment, City of Toronto
Mr. Lotto	Clerk, Municipality of Metropolitan Toronto
Mr. Lychak	Commissioner of Planning, Regional Municipality of Hamilton-Wentworth
Mr. McElory	Superintendent of Business Affairs, Wentworth County Board of Education
Dr. McKeown	Assistant Director, City of Toronto Board of Education
Mr. McKibbon	Clerk, City of Kingston
Mr. Melesky	Clerk, Township of Malden
Mr. Mitchell	Building Commissioner, City of Windsor
Mr. Moehlen	Director, Dryden District Separate School Board
Mr. Muirhead	Commissioner of Planning, City of Kingston
Mr. Mulligan	Director, Municipality of Metropolitan Toronto Separate School Board
Mr. Nixon	Executive Assistant to Director of Education, Hamilton Board of Education
Mr. Noakes	Secretary Treasurer, Committee of Adjustment City of Windsor
Mr. Payne	City Administrator, City of Windsor

Mr. Penner	Deputy Business Administrator, Hamilton Board of Education
Mr. Pickard	Treasurer, Municipality of Metropolitan Toronto
Mr. Poots	Clerk, Borough of Scarborough
Mr. Rice	Chief of Police, City of Kingston
Mr. Seguin	Director, Essex County Board of Education
Mrs. Siddall	Deputy Clerk, Town of Leamington
Mr. Simpson	Secretary, Hamilton-Wentworth Police Commission
Mr. Sinclair	Director, Dryden District School Board
Mr. Sinclair	Director, Frontenac County Board of Education
Mr. Sommerville	Community Services Officer, Windsor Police Department
Mr. Soskolne	Chief Planner, City of Toronto
Mr. Sylvestre	Clerk-Treasurer, Township of Rochester
Mr. Torrance	Chief, Hamilton-Wentworth Police Department
Mr. Van den Brande	County Administrator, County of Essex
Mr. Wake	Clerk, Town of Dryden
Mr. Warren	Planner, Chief Building Officer, Town of Dryden
Mr. Whittle	Chief, Leamington Police Department
Mr. Williamson	Chief, Windsor Police Department

3. Groups and Individuals in Community

Mr. Bodnar	Resident, Anderdon Township
Mr. Bossons	Annex Residents Association
Mr. Boulay	Committee of Concerned Taxpayers of Scarborough
Mr. Buckthorpe	Ontario Secondary School Teachers Federation
Mr. Burr	Director, Forest Glade Citizen's Association
Mr. Chambers	Committee of Concerned Taxpayers of Scarborough
Ms. Corbett	Former Member of the Ontario Municipal Board
Ms. Doiron	The Education Editor
Mr. Donnelly	Ombudsman's Office
Mr. Elliot	Committee of Concerned Taxpayers of Scarborough
Mr. Fortowsky	Chairman, Essex County Ratepayers Association
Mr. Jensen	Committee of Concerned Taxpayers of Scarborough
Mrs. Kondruk	Secretary, Windsor Ratepayers Association
Mr. MacDonald	Resident, St. Clair Beach
Mr. Quinn	Committee of Concerned Taxpayers of Scarborough
Mr. Roberts	Confederation of Residents and Ratepayers Associations, Swansea Ratepayers Association
Mr. Vorster	Toronto Teachers Federation

4. Members of Media

Mr. Baker	Reporter, Globe and Mail
Mr. Chamberlain	Editorialist, The Windsor Star
Mr. Coleman	Reporter, The Windsor Star
Mr. Dawson	Reporter, Kingston Whig-Standard
Mr. Delmas	C.B.C. Reporter, Toronto
Mr. Duncan	Publisher, The Leamington Post
Mr. Flood	Reporter, The Dryden Observer
Mr. Fox	Reporter, The Windsor Star
Mr. Frezell	Reporter, The Windsor Star
Mrs. Kishkon	Commentator, C.B.E. Radio
Mr. Latter	Reporter, The Dryden Observer
Mr. McMahon	Reporter, The Windsor Star
Ms. Mira	Reporter, The Hamilton Spectator
Ms. Precop	Columnist, The Windsor Star
Ms. Raeburn	Reporter, C.B.E.T. Television
Mr. Sheppard	Reporter, Globe and Mail
Mr. Sherman	Reporter, C.B.E.T. Television
Mr. Spicer	Reporter, The Windsor Star
Mr. Thibodeau	Reporter, The Leamington Post
Mr. Van Nie	Reporter, The Windsor Star
Mrs. Wigle	Reporter, The Windsor Star

APPENDIX B

EXAMPLES OF POLICIES ADOPTED BY LOCAL AUTHORITIES GOVERNING ACCESS TO INFORMATION AND MEETINGS

1. City of London Policy Manual, Adopted, April 3, 1978

(34) That, on the recommendation of the Chief Administrative Officer, on the advice of the City Clerk and the City Solicitor, the following policy be established with respect to access to information, namely:

(a) Any elected person or any member of the public may inspect any files in the possession or under the control of any department or division of the Civic Administration, except with respect to any information contained therein, the disclosure of which may be detrimental to the City's interests having regard to the following:

(i) the disclosure of such information is prohibited by law;

(ii) the information is legal in nature involving potential or pending proceedings before the courts or an administrative tribunal or involving legal opinions or advice;

(iii) the information involves the purchase, sale, expropriation or management of property;

(iv) the information involves City personnel;

(v) the premature disclosure of such information may prejudice the City's interests;

(vi) the information was supplied to the Department or Division in confidence by a source outside of the Corporation;

(vii) disclosure of the information would result in unwarranted invasion of privacy of an individual.

(b) The following guidelines shall be followed with respect to the

inspection of files, namely:

(i) access to departmental or division files shall be confined to normal office hours;

(ii) files shall not be taken out of the Department or Division offices;

(iii) requests which would involve considerable staff research and would unduly disrupt normal office operation shall be dealt with, by permitting the applicant or his agent to do their own research, in the presence of a staff member, to ensure that all documents are returned to their proper files;

(iv) copies of documents shall be made available within a reasonable period of time and when the request is from the public a rate shall be charged as prescribed by policy number 8(21) of the City of London Policy Manual;

(v) Department or Division Heads shall be primarily responsible for the administration of this policy, but an appeal lies, firstly from a decision of a Department Head to the Chief Administrative Officer and secondly from a decision of the Chief Administrative Officer to Council;

(vi) that subject to guideline number (iii), the files of the Planning Division of the Community Services Department shall be available for review by members of the City Council and the public as soon as individual official applications have been made.

(c) The following procedures shall be followed by the City Clerk with regard to the listing of confidential information on agendas and reports of the Board of Control, Standing Committees and Special Committees of the City Council, namely:

(i) that all information contained in confidential agendas be referred to on the public portion of the agenda along with an indication of the topic (e.g. similar to the practice presently being followed on Board of Control agendas);

(ii) that similarly on the public portion of the reports to City Council, there be an itemized list of those matters contained in the confidential report with an indication of the subject matter.

(d) Any matter or communication coming before the Board of Control, a committee of City Council, or the City Council itself, shall, unless it treats of information of the type identified in section (a) above, be discussed in open public session.

ADOPTED APRIL 3, 1978

2. Town of Richmond Hill - Resolution on Public Access to Information Adopted Unanimously May 5, 1978

A. Agenda Publication

1) All agendas for Council meetings and meetings of Committees of Council to be available for distribution at 3:00 p.m. on the Thursday preceding the week during which the meeting is to take place.

2) All agenda for Council meetings and meetings of Committees of Council to be hand delivered to a) all members of Council b) all resident members of Committees of Council, c) the Richmond Hill Liberal, d) all libraries within the municipality, and all Municipal Departments, by noon on the Friday preceding the week during which the meeting to which the agenda refers is to take place.

3) The Clerk's Department to establish a mailing list for a) agendas, and b) public reports on which any person, association, corporation or group, other than in A(2), may by written application be listed. The applicant to specify whether receipt of the agenda and/or the report is to be by pick-up from the municipal offices or by regular mail. The agendas and reports so made available to be at cost determined by the Treasurer and billing for same to be by quarter in advance.

B. Public Access to Agendas and Reports

1) All libraries within the municipality and the Clerk's Department be requested to keep agendas for public viewing from the date of receipt until one week following the meeting to which the agenda refers.

2) In addition to B(1) the Wright Street Library be requested to keep a permanent record of agendas indexed for easy access by the public.

3) The Wright Street library be hand delivered all Department reports when publicly released and be requested to keep a permanent record of same indexed for easy access by the public. For the purpose of this policy "reports when publicly released" shall mean when a report is introduced in any public Council meeting, or public meeting of Committees of Council, or when a Department report is delivered to members of Council unless the Chairperson of the Committee to which the Department is responsible advises the Department head the report is not yet public, whichever shall occur first.

4) The Wright Street library be requested to make available to the public reproducing facilities at cost for the reproduction of agendas and/or reports in whole or in part.

C. Press Notice of Meetings

That an agreement be entered into between the municipality and the Richmond Hill Liberal for a "Civic Corner" for the purpose of listing the time, date and place of Council meetings and meetings of Committees of Council, and in addition the main topics of meetings of Committees of Council. For the purpose of this policy the Chairperson of the Committee of Council concerned shall advise the Clerk's Department by noon of each Friday the topic listing for that Committee and shall list no more than five topics by no more than twenty-five words each. For the purpose of this policy the Clerk's Department shall deliver to the Richmond Hill Liberal by 4:30 p.m. of each Friday an updated "Civic Corner" notice listing therein all regularly scheduled meetings and special meetings known to the Clerk's Department due to take place in the two weeks following.

Special Meetings

All notices of Special Meetings called by the Mayor or Chairperson of a Committee of Council to be hand delivered to the Richmond Hill Liberal and all libraries within the municipality no later than forty-eight hours preceding the start of such Special Meeting.

3. Frontenac-Addington Board of Education - General By-laws

2.1.0 INITIAL PRIVATE MEETING

2.1.1 The Initial Private Meeting of the Board shall be held in the Board Rooms on a date in the first week of January, which shall have been determined by resolution of the Board at the first regular meeting in December of the preceding year. To this Initial Private Meeting shall be invited all the elected members of the Board, to nominate the Chairman and the Vice-Chairman of the Board, and the Chairmen and members of the standing committees. The Secretary of the Board shall be Chairman of this Initial Private Meeting until the Chairman has been nominated, and the Secretary shall then retire.

2.1.2 A special committee shall be formed to report the results of the Initial Private Meeting to the Inaugural Meeting.

2.2.0 INAUGURAL MEETING

2.2.1 Subject to paragraph 3 of Section 180, The Education Act, 1974, the Inaugural Meeting of the Board shall be held at 8:00 p.m. on the second Wednesday in January [The Education Act, 1974, Section 180(2)(a)].

2.2.2 The procedure of the Inaugural Meeting, subject to other By-laws, shall be as follows:

(a) The Chief Executive Officer shall preside until the election of the Chairman.

(b) In the year following an election, the Secretary shall provide a statement certifying:

i. the election of the various members as reported by the election Returning Officers;

ii. that all elected members have taken the Declaration of Office and the Oath of Allegiance;

iii. that the Board is legally constituted.

(c) The Chief Executive Officer shall then conduct the election for the office of Chairman of the Board, which shall be made by nomination and may be a vote by ballot.

i. The member receiving the majority of the votes cast shall be declared elected.

2.7.0 AGENDA FOR MEETINGS

2.7.1 There shall be an agenda for each regular meeting of the Board.

2.7.2 It shall be the responsibility of the Chairman, the Director and the Secretary to establish the agenda for all regular meetings of the Board.

2.7.3 The agenda shall be mailed or delivered to each member of the Board not less than 72 hours prior to the meeting of the Board, excluding Saturdays, Sundays and holidays.

2.8.0 OPENNESS OF MEETINGS

2.8.1 All regular meetings of the Board and all meetings of committees shall be open to the public, except those considering:

(a) individuals or groups of individuals who may be readily identifiable;

(b) salary negotiations or proposed changes in the salary schedule;

(c) the purchase, sale or rental of property; and

(d) discussion leading to awarding tenders or contracts (tenders shall be opened and awarded in public session).

2.9.0 COMMUNICATIONS

2.9.1 All communications addressed to the Board of Education, the Chairman, Director or Secretary, which require action on the part of the Board, shall be included in the agenda for the next regular Board meeting. Other communications may be brought to the meeting for information.

2.9.2 Until a member of the Board, or of one of its committees, shall notify the Secretary, in writing, of his official address, all notices or communications delivered or mailed to the member at his address set out in the nomination paper, or set out in his notification of appointment, shall be deemed to have been received by him.

2.10.0 DELEGATIONS AND SUBMISSIONS

2.10.1 A person or a delegation shall be required to submit to the Secretary, a written application to appear before the Board or a committee stating the matter on which a submission is to be made, the organization of interested parties to be represented,

and the authority of the spokesman, and shall be required to submit a written brief to the Secretary so that it may be mailed with the agenda for the meeting at which the delegation wishes to appear.

2.10.2 A delegation shall designate not more than two persons or spokesmen and no other member of the delegation shall address the Board or committee, except at the request of a trustee, and with permission of the Chairman.

2.10.3 In consultation with the Chairman, the Secretary shall inform the delegation as to the time during the meeting when its spokesman shall be heard.

2.10.4 If a decision is not made at the same meeting at which a delegation appears before the Board, the delegation shall be notified by letter of the date of the hearing at which a decision is to be made, or a staff report is to be considered concerning its submission.

4. By-laws of the Hamilton-Wentworth Roman Catholic Separate School Board

8.20 The Board may, by a resolution passed in the public session, refer any matter to a committee for consideration and/or disposition in private session provided that such resolution stipulates the reason for such referral.

8.23 The following matters should be considered by the Board and/or its committees in camera:

(i) The liability of the Board, which, in the opinion of the Chairman of the Board and the Chief Executive Officer, may involve legal implications.

(ii) Personnel matters such as efficiency, discipline, termination or other retirement of employees, medical reports or examinations, staff changes.

(iii) Reports by Assistant Superintendents or Area Superintendents on instructional operation of the schools and any report having reference to the general educational programme which, in the opinion of the Chairman of the Board and

the Chief Executive Officer, might be prejudicial to the operation of the schools.

(iv) Lease or purchase of property.

(v) Negotiations of salary and wage schedules of employees.

(vi) Suspension, expulsion, exclusion of pupils or students and readmission of same (confidential record of which shall be kept in the office of the Chief Executive Officer).

(vii) Indigent pupils, (confidential record of which shall be kept in the office of the Chief Executive Officer).

(viii) An in camera (Caucus) meeting of the Board shall deal only with topics referred to in the preceding article items (i) to (vii). However, a trustee wishing to have a topic considered in camera may place the topic before the Board and if two-thirds of the members present and voting agree to its consideration, it shall be placed on the agenda for in camera consideration.

9.00 DELEGATIONS AND SUBMISSIONS

9.01 A person or delegation shall be required to submit to the Secretary, a written application to appear before the Board or a Committee, stating the matter on which a submission is to be made, the organization or interested parties to be represented, and the authority of the spokesman; and shall also be required to submit a written brief to the Secretary before 1:00 o'clock in the forenoon of the third day before the meeting (excluding Saturdays, Sundays and holidays) for inclusion in the agenda.

9.02 A delegation shall designate not more than two persons as spokesmen and no other member of the delegation shall address the Board or Committee, except by request of a trustee, and with permission of the Chairman.

9.03 If, in the opinion of the Secretary of the Board, after consultation with the Chairman, the topic to be discussed by the delegation relates directly to the terms of reference of a standing committee of the Board, then it shall be referred to the next meeting of that committee. If, however, the topic relates to the terms of reference of more than one committee of the Board, it shall then be referred to the next meeting of the Board.

9.04 If a decision is not made at the same meeting at which a delegation appears before the Board, the delegation shall be notified by letter of the date of the meeting at which a decision is to be made or a staff report is to be considered concerning their representations.

COMMISSION RESEARCH PUBLICATIONS

The following list of research publications prepared for the Commission may be obtained at the Ontario Government Bookstore in Toronto, or by mail through the

Publications Centre
880 Bay Street, 5th Floor
Toronto, Ontario M7A 1N8.

All publications cost $2.00 each. Orders placed through the Publications Centre should be accompanied by a cheque or money order made payable to the "Treasurer of Ontario".

Further titles will be announced upon their completion.

The Freedom of Information Issue: A Political Analysis
Research Publication 1
by Prof. Donald V. Smiley, York University

Freedom of Information and Ministerial Responsibility
Research Publication 2
by Prof. Kenneth Kernaghan, Brock University

Public Access to Government Documents: A Comparative Perspective
Research Publication 3
by Prof. Donald C. Rowat, Carleton University

Information Access and the Workmen's Compensation Board
Research Publication 4
by Prof. Terence Ison, Queen's University

Research and Statistical Uses of Ontario Government Personal Data
Research Publication 5
by Prof. David H. Flaherty, University of Western Ontario

Access to Information: Ontario Government Administrative Operations
Research Publication 6
by Hugh R. Hanson et al.

Freedom of Information in Local Government in Ontario
Research Publication 7
by Prof. Stanley M. Makuch and Mr. John Jackson

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